

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: October 30, 2000
49th Day: December 18, 2000
180th Day: April 28, 2001
Staff: KFS-LB
Staff Report: March 28, 2001
Hearing Date: April 10-13, 2001
Commission Action:

**ITEM W15d****STAFF REPORT: PERMIT AMENDMENT****AMENDMENT**

APPLICATION NUMBER: 5-92-188-A4

APPLICANT: CPH Resorts I, LLC

AGENT: Culbertson, Adams & Associates

PROJECT LOCATION: North of Pacific Coast Highway, East of Crown Valley Pkwy, West of Salt Creek, Dana Point (Orange County)

DESCRIPTION OF PROJECT PREVIOUSLY APPROVED AND AMENDED: Subdivision and construction of 111 attached residential units on 14.3 acres. The proposed residential units were two to three stories tall (28 to 41 feet high) and had floor areas from 1,800 to 2,700 square feet; in addition grading included 85,000 cubic yards of cut and 33,000 cubic yards of fill.

DESCRIPTION OF AMENDMENT: Change proposed residential subdivision from 111 units to 48 units on 14.3 acres of a 23.1 acre site; change height of proposed residences to 28 to 32 feet tall; change building floor areas to 2,830 to 4,999 square feet; change grading to 85,000 cubic yards of cut and 60,000 cubic yards of fill plus 150,000 cubic yards of remedial grading; construct a 4 foot wide public trail; implement an on-site wetland enhancement program and a fuel modification and habitat management program; and dedicate an open space easement over 8.8 acres of the 23.1 acre site.

LOCAL APPROVALS RECEIVED: Mitigated Negative Declaration approved by the City of Dana Point on August 22, 2000, in Resolution No. 00-08-22-05; Site Development Permit Amendment 91-05(1) and Amended VTTM 14605 approved by the City of Dana Point on August 22, 2000 in Resolution No. 00-08-22-06.

SUMMARY OF STAFF RECOMMENDATION:

Staff is recommending **APPROVAL** of the proposed coastal development permit amendment with special conditions. The major issue of this staff report includes potential impacts upon a 0.24 acre wetland, impacts upon coastal sage scrub habitat occupied by California gnatcatcher, impacts upon public views, and water quality impacts. Staff recommends the Commission retain 5 of 7 previously imposed special conditions and add 16 new special conditions. Conditions to remain are those related to a coastal access fund, affordable housing, development phasing, signage, and future development. New special conditions relate to carrying forward previous conditions, extinguishment of development rights on a related but conflicting permit, compliance with a wetlands enhancement and buffer program, recordation of open space deed restrictions over lands occupied by wetlands and coastal sage scrub/California gnatcatcher, requirements related to construction staging, buffer

requirements for the coastal sage scrub and California gnatcatcher, revised Tentative Tract Map, Site Plan, and Fuel Modification Program, compliance with various proposed habitat management measures, recordation of a public trail easement, conformance with geotechnical report recommendations, recordation of an assumption-of-risk deed restriction, identification of a debris disposal site, water quality requirements, construction phase water quality protection requirements, and compliance with the terms of the permit.

SUBSTANTIVE FILE DOCUMENTS: Coastal development permit files: P-79-5539 and amendments, 5-92-188 and amendments, 5-92-186 and amendments, 5-96-006 and amendments, 5-92-168 and amendments; City of Dana Point certified local coastal program; *Biological Assessment of the Disturbed/Freshwater Marsh Habitat on Monarch Beach Resort Project, City of Dana Point, Orange County, California*, dated October 28, 1998, by Bonterra Consulting of Costa Mesa, California; *Wetlands Determination, Biological Assessment and Jurisdictional Delineation of Artificially-Created Freshwater Marsh on Monarch Beach Resort Site, Dana Point, California* dated December 22, 1998 by Glenn Lukos Associates of Laguna Hills; Geotechnical Report for Grading Design Tentative Tract 14605, Hillside Village South, Dana Point, California by AGRA Earth & Environmental, Inc. of Anaheim, California dated March 20, 2000; the geologic letter report titled Geotechnical Review of Proposed Improvements to Tract 14604 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000; and the geologic letter report titled Geotechnical Review of Proposed Wetlands Area, Lot 8 Tract 14605 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000; Conceptual Enhancement/Buffer Program for the Hillside Village South Project, Vesting Tentative Tract # 14605 prepared by BonTerra Consulting which was received in the Commission's South Coast District Office on March 7, 2001; Water Quality Management Plan, (WQMP) prepared by Hunsaker & Associates Irvine, Inc. of Irvine, California, dated October 5, 2000; Visual Analyses by the applicant and opponent; Expanded Initial Study and Subsequent Mitigated Negative Declaration dated March 31, 2000; Letter from BonTerra Consulting to Commission staff dated September 25, 2000 regarding biological resources at the project site.

PROCEDURAL NOTE

1. Coastal Development Permit Amendments

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. 14 Cal. Admin. Code 13166.

The proposed amendment will substantially modify the previously approved project. In addition, the proposed project could impact wetlands and coastal sage scrub occupied by California gnatcatcher.

Therefore, the Executive Director has determined that the proposed amendment is a material change to Coastal Development Permit 5-92-188.

2. Jurisdiction to Issue Coastal Development Permit Amendment

The proposed residential development is a portion of the partially constructed master-planned resort, recreational, commercial and residential community known as Monarch Beach which was conceptually approved by the Commission under Coastal Development Permit P-79-5539 in 1979. Coastal Development Permit P-79-5539 essentially set up a “mini” local coastal program for the area, under which subsequent permits were to be issued by either the Commission or the Executive Director for the individual projects which comprised the master planned community. When the Commission approved a local coastal program for the Monarch Beach area in 1997, the basic requirements of P-79-5539 were incorporated into the plan, including a requirement that the Commission retain jurisdiction over compliance with P-79-5539 and any subsequent permits related to the development. The proposed project is an amendment to a Commission issued coastal development permit (5-92-188). Coastal Development Permit 5-92-188 was granted in accordance with the terms and conditions of Coastal Development Permit P-79-5539. Therefore, since the proposed project is an amendment to a Coastal Commission issued permit that is subsequent to Coastal Development Permit P-79-5539, the Commission retains jurisdiction over the proposed project.

3. Standard of Review

The local coastal program (“LCP”) for this area of the City of Dana Point was effectively certified on November 5, 1997. The Commission, in certifying the LCP, found the LCP to be in conformity with and adequate to carry out the Coastal Act. Although, review of amendments to coastal development permits approved by the Commission is not delegated to the local government after certification of the LCP, pursuant to Section 30604(b) of the Coastal Act, the Commission must act on requests to amend the subject permit utilizing the standards of the certified LCP.

I. MOTION, STAFF RECOMMENDATION, AND RESOLUTION OF APPROVAL.

MOTION: *I move that the Commission approve the proposed amendment to Coastal Development Permit No. 5-92-188 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE A PERMIT AMENDMENT:

The Commission hereby approves the coastal development permit amendment on the ground that the development as amended and subject to conditions, will be in conformity with the policies of the certified Local Coastal Program. Approval of the permit amendment complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

II. STANDARD CONDITIONS:

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **COASTAL ACCESS FUND** (Previously Imposed -- Not Changed by this Amendment)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall pay a fee of \$545.86 in 1992 dollars (based on the original fee of \$275 in 1979 dollars adjusted according to increases in the Consumer Price Index - U.S. City Average) for each new residential unit. No fee shall be required for each "affordable" unit that is part of an affordable housing program. The fee shall be in renewable Certificates of Deposit, principal and interest payable for recreation and coastal transit or at the direction of the Executive Director of the California Coastal Commission or until such time a Coastal Access Program is established and administered by a separate legal entity. The Certificates of Deposit shall be placed in the possession of the California Coastal Commission for safekeeping. Upon the execution of a binding legal agreement between the agency implementing and administering the Coastal Access Program and the Coastal Commission and Coastal Conservancy which specifies the

limitation on the use of the funds for the provision of coastal recreational transit services or other coastal access purposes in Orange County, the Certificates of Deposit shall then be transferred to that agency for use in implementing the Coastal Access Program.

2. **AFFORDABLE HOUSING** (Previously Imposed -- Not Changed by this Amendment)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall show evidence, subject to the review and approval of the Executive Director that the applicant has complied with the recorded agreement to provide affordable housing pursuant to the Low-Cost and Moderate-Cost Housing condition of the "Master Permit" P-79-5539. The applicant may submit a permit amendment to propose an alternative method of complying with the affordable housing requirements.

3. **PHASED DEVELOPMENT** (Previously Imposed -- Not Changed by this Amendment)

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant will submit to the Executive Director for review and approval a written agreement for recording the following: Development shall be phased and shall comply with the phasing plan of the Monarch Beach Resort Final Specific Plan. Highest development priority shall be given to public open space uses, parks, trails, and public roads. Second priority shall be given to the hotel, tram, and golf clubhouse. Any changes to the phased development plan shall require the approval of the Executive Director. The agreement shall also include the development of a public beach house consistent with local and Coastal Commission approvals.

4. **PARKING** (Previously Imposed -- **DELETED** by this Amendment)

~~Prior to issuance of this permit, the applicant shall submit to the Executive Director, for review and approval a deed restriction which contains the following public parking provisions: The parking spaces for the golf clubhouse shall be available to the general public. The hourly parking fee or total daily fee, for general public use, shall not be greater than the fee charged at the nearest State Beach Park parking facility.~~

~~_____ Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval a monitoring plan to gather parking and vehicle occupancy data for the hotel and golf clubhouse. The purpose of this study will be to evaluate the adequacy of parking for both the hotel and the golf clubhouse. The monitoring program will collect data for two years, will commence when both the hotel and golf clubhouse are operational, and the applicant shall report annually the results of the study. Should parking prove to be deficient the applicant, through the permit amendment process, shall provide additional onsite parking.~~

5. **PUBLIC ACCESS** (Previously Imposed -- **DELETED** by this Amendment)

~~Prior to issuance of the permit the applicant shall submit to the Executive Director for review and approval a deed restriction which contains the following public access provisions:~~

- ~~a. A minimum of 50% of all recreational facilities time slots of the Hotel Village and the Golf Clubhouse shall be reserved for general fee-paying public use on a daily or hourly basis. If time slots or facilities set aside for non-members are not reserved 24 hours in advance, they may be reserved by members.~~

- ~~b. General public use (rental) of the meeting rooms.~~
- ~~c. Public access shall be maintained to all common areas of the development. The deed restriction shall include an exhibit, prepared by the applicant illustrating those areas to be maintained open to the general public. Said areas shall include, but not be limited to, the lobby, restaurants, pool areas, landscaped grounds and walkways.~~

6. **SIGNAGE PLANS** (Previously Imposed -- Not Changed by this Amendment)

PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall submit to the Executive Director for review and approval the following:

- a. A detailed signage plan with signs visible from the Coast Highway and Niguel Road, which invites and encourages public use of the public access opportunities. The plan shall clearly state proposed material and colors to be used, locations of signs, dimensions, and sign text. Appropriate signage for trail heads shall be emphasized. Signs shall invite and encourage public use of access opportunities. Signage shall identify, provide information and direct users to all the key locations. Key locations include: public parking, golf course, golf clubhouse, beach access, tunnels, beach parking, park areas, tram operation, hotel areas, trails and other points of interest.
- b. An implementation plan for a primary visitor information center located at the hotel site which shall provide information about the available public uses throughout the resort complex. This information center shall be fully functional concurrent with the opening of the hotel.

7. **FUTURE DEVELOPMENT** (Previously Imposed -- Not Changed by this Amendment)

Prior to the issuance of the coastal development permit, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, stating that the subject permit is only for the development described in the Coastal Development Permit No. 5-92-188; and that any future improvements to the property or changes to the development plan approved herein will require a new permit or permit amendment from the Coastal Commission or its successor agency. The document shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens.

8. **PRIOR CONDITIONS**

Unless specifically altered by this amendment, all regular and special conditions attached to coastal development permit 5-92-188 remain in effect.

9. EXTINGUISHMENT OF DEVELOPMENT RIGHTS

As proposed by the applicant, approval of Coastal Development Permit Amendment 5-92-188-A4 voids all development rights granted under Coastal Development Permit 5-92-186.

10. COMPLIANCE WITH WETLANDS ENHANCEMENT AND BUFFER PLAN

The applicant or successor in interest shall implement and comply with the recommendations and mitigation contained within Conceptual Enhancement/Buffer Program for the Hillside Village South Project, Vesting Tentative Tract # 14605 prepared by BonTerra Consulting which was received in the Commission's South Coast District Office on March 7, 2001. The proposed wetlands enhancement and buffer plan shall be implemented prior to or concurrent with the proposed residential development. The proposed monitoring and maintenance shall occur for the proposed five (5) year period. The applicant or successor in interest shall supply the proposed annual monitoring reports to the Executive Director of the California Coastal Commission at the end of the first, second, third, fourth, and fifth years following the native vegetation installation. The applicant or successor in interest shall comply with the proposed wetlands enhancement and buffer plan performance criteria that the wetlands and enhancement area be biologically diverse and provide 90 percent relative native plant cover. If at the end of the proposed five year period, the performance criteria have not been met, the applicant or successor in interest shall provide an analysis to the Executive Director of why the plan did not succeed and the measures to be taken to ensure success. If at the end of the proposed five year period the performance criteria have not been met, the applicant or successor in interest shall seek an amendment for measures to ensure the success of the wetlands enhancement and buffer plan. Any changes to the approved wetlands enhancement and buffer plan, including but not limited to changes to the monitoring program to ensure success of the mitigation site, shall require an amendment to this permit from the Coastal Commission or written concurrence from the Executive Director that the changes do not require a permit amendment.

11. OPEN SPACE DEED RESTRICTION - WETLANDS

- A. No development, as defined in Section 9.75.040 of the Implementation Plan of the City of Dana Point Local Coastal Program shall occur in the wetlands enhancement and buffer area (i.e. Lot 8 of VTTM 14605) except for:
1. The proposed grading and construction of walls shown on VTTM 14605 prepared by Hunsaker & Associates dated 7/24/2000 with the revision date of 8/16/2000 and plot date of 9/21/2000;
 2. Activities related to management of the wetlands and buffer area described in Conceptual Enhancement/Buffer Program for the Hillside Village South Project, Vesting Tentative Tract # 14605 prepared by BonTerra Consulting which was received in the Commission's South Coast District Office on March 7, 2001;
 3. The construction and maintenance of a pre-settlement basin and/or associated facilities for water quality and run-off control within Lot 8 provided that such development would not impact the wetland or other sensitive vegetation, is compatible

with the 25 foot buffer, and is sized and designed to avoid sedimentation and erosion impacts upon the wetland; and

4. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: activities related to public access, recreation, and wetland or habitat restoration.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which shows that the open space area identified in subsection A of this condition shall be restricted as open space for wetlands enhancement and buffer area and the deed restriction shall reflect the above restriction on development in the designated open space. The deed restriction shall contain the Conceptual Enhancement/Buffer Program for the Hillside Village South Project, Vesting Tentative Tract # 14605 prepared by BonTerra Consulting which was received in the Commission's South Coast District Office on March 7, 2001. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

12. OPEN SPACE DEED RESTRICTION – COASTAL SAGE SCRUB AND CALIFORNIA GNATCATCHER HABITAT AREA

- A. As proposed, no development, as defined in Section 9.75.040 of the Implementation Plan of the City of Dana Point Local Coastal Program shall occur in the coastal sage scrub and California gnatcatcher habitat area (i.e. all of the land described in of VTTM 14604) except for:
1. Activities related to fire safety and management of the coastal sage scrub and California gnatcatcher habitat areas as specifically described in the Precise Fuel Modification Plan received in the Commission's South Coast District Office on March 6, 2001 and revised pursuant to Special Condition 15; and
 2. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit: activities related to public access, recreation, and habitat restoration.
- B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, which shows that the open space area identified in subsection A of this condition shall be restricted as open space for fire safety and habitat enhancement and buffer area and the deed restriction shall reflect the above restriction on development in the designated open space. The deed restriction shall contain the requirements of the Precise Fuel Modification Plan received in the Commission's South Coast District Office on March 6, 2001 and modified pursuant to Special Condition 15. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the open space area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the

restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

13. STAGING AREA FOR CONSTRUCTION

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands, coastal sage scrub and other California gnatcatcher occupied habitat, and public accessways.

1. The plan shall demonstrate that:

- (a) Construction equipment, materials or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition; and
- (b) Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands, coastal sage scrub and other California gnatcatcher occupied habitat, or public accessway.

2. The plan shall include, at a minimum, the following components:

(a) A site plan that depicts:

- (1) limits of the staging area(s);
- (2) construction corridor(s);
- (3) construction site;
- (4) location of construction fencing and temporary job trailers with respect to existing wetlands, coastal sage scrub and other California gnatcatcher occupied habitat, and public accessways.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

14. COASTAL SAGE SCRUB AND CALIFORNIA GNATCATCHER BUFFER REQUIREMENTS

A. No structures, including any public trail, fences, or signs, shall be constructed within 25 feet of the edge of CSS Stand 1 and CSS Stand 2 (as labeled on Exhibit 4). A public trail and habitat management related development such as fences and signs shall be allowed within a 25 foot zone adjacent to the 25 foot wide no structure zone (the no-structures and minor-structure zone is a total of 50 feet wide; 25 feet wide for each part).

B. A minimum 50 foot wide native vegetation buffer shall be established between the edge of CSS Stands 1 and 2 (as labeled on Exhibit 4) and the residential development which shall be planted and managed in the manner identified as "Zone B" on the Precise Fuel Modification Plan received in the Commission's office on March 6, 2001 and as revised pursuant to

Special Condition 15 and 16. The vegetated buffer shall be established prior to or concurrent with the commencement of construction of the residential development. The public trail shall be located as far as feasible from the edge of CSS Stands 1 and 2 but may be within the 50 foot wide vegetated buffer but no closer than 25 feet to the outer edge of CSS Stands 1 and 2. A fence that is impervious to dogs and at least 4 feet high shall be placed between the trail and CSS Stands 1 and 2. Native vegetation shall be planted between the trail and the fence.

15. REVISED PLANS

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. The revised plans shall show the following changes to the project:

1. **Revisions To VTTM 14605 and Site Plan**

- (a) The grading shown on VTTM 14605 prepared by Hunsaker & Associates dated 7/24/2000 with the revision date of 8/16/2000 and plot date of 9/21/2000 and the site plans shall be revised as follows: No grading shall occur within 25 feet of the edge of CSS Stand 1 and CSS Stand 2 (as labeled on Exhibit 4). Only minor surficial grading (less than 6 inches change from existing grade using only hand tools) for the construction of a public trail shall be allowed within a 25 foot zone adjacent to the 25 foot wide no grading zone (the no-grading and limited-grading zone is a total of 50 feet wide; 25 feet wide for each part). If anything more than minor surficial grading, as defined above, is necessary to construct any portion of the public trail, the trail or portions thereof which require more than surficial grading shall be moved out of the 50 foot wide grading buffer area.
- (b) The 8 foot wide public trail easement and 4 foot wide trail shown on VTTM 14605 prepared by Hunsaker & Associates dated 7/24/2000 with the revision date of 8/16/2000 and plot date of 9/21/2000 identified as Trail Segment A on Exhibit 4 of these findings dated March 28, 2001 shall generally conform to the alignment shown which connects the Salt Creek Trail to the Monarch Bay Plaza Shopping Center but be revised to conform to the requirements outlined in Special Condition 14 and subsection 1.a. of this condition. In addition, any site plans showing the trail shall be updated in accordance with the requirements of the special conditions of this permit amendment.

2. **Revisions To Precise Fuel Modification Plan**

- (a) Fuel modification within Zone B – Area 2 (as labeled on Exhibit 4) shall be avoided;
- (b) Zone B – Area 2 (as labeled on Exhibit 4) shall be planted with *Artemesia californica* in the same manner as the 0.31 acres of *Artemesia californica* required by the USFWS. This area shall be managed in the same manner as CSS Stands 1 and 2 (as labeled on Exhibit 4) (i.e. no fuel modification activities). This habitat shall be planted prior to or concurrent with commencement of construction of the residential development.
- (c) Zone B – Area 1 (as labeled on Exhibit 4) shall be expanded to be a minimum 50 feet wide. The public trail shall be located as far as feasible from the outer edge of CSS Stands 1 and 2 but may be within the 50 foot wide Zone B – Area 1 but no closer than 25 feet to the outer edge of CSS Stands 1 and 2. No portion of Zone A shall encroach into the revised Zone B – Area 1.
- (d) If in response to items 2.a. through 2.c. above the Orange County Fire Authority requires changes to the project for fire safety, the applicant shall first consider moving the development away from the open space area such that it would be safe from fire hazards rather than implement any additional thinning or removal of vegetation within the open space area. Alternative methods of meeting fire safety requirements may be considered provided such alternatives do not result in impacts upon sensitive habitat areas. Any such changes shall require an amendment to this permit unless the Executive Director determines that no amendment is required;
- (e) The fuel modification plan shall be modified to incorporate the changes outlined in Special Conditions 14 and 16;
- (f) The fuel modification plan shall include a statement which notes that any changes to the plan, including any changes recommended by the Orange County Fire Authority or other resource agencies, shall be reported to the Executive Director of the Coastal Commission, and may require an amendment to this permit or a new coastal development permit;
- (g) The fuel modification plan shall be re-named the “Precise Fuel Modification Plan and Habitat Management Program”.

- B. The revised plans shall, prior to submittal to the Executive Director, be reviewed and certified by a qualified professional to ensure that they are consistent with the Commission’s approval and with the requirements of the California Fire Code and the recommendations in Geotechnical Report for Grading Design Tentative Tract 14605, Hillside Village South, Dana Point, California by AGRA Earth & Environmental, Inc. of Anaheim, California dated March 20, 2000; the geologic letter report titled Geotechnical Review of Proposed Improvements to Tract 14604 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000; and the geologic letter report titled Geotechnical Review of Proposed Wetlands Area, Lot 8 Tract 14605 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000. Any changes to the project to conform with the above shall be reported to the Executive Director. No changes shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- C. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No

changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

16. COMPLIANCE WITH PROPOSED HABITAT MANAGEMENT MEASURES

As proposed by the applicant, the applicant shall comply with the following habitat impact avoidance and habitat management measures:

- (a) The applicant shall construct fencing between the proposed trail and dedicated open space area to discourage off-trail use of the area;
- (b) Signage shall be placed at selected locations, subject to the approval of the Executive Director, which explain the biological importance of the area, the sensitivity and protections for the California gnatcatcher, the limitations on disturbance to vegetation and contact information for further guidance;
- (c) Exterior residential and parking area lighting adjacent to the open space areas shall be shielded and directed away from the open space areas;
- (d) Hospital grade mufflers shall be used on grading equipment;
- (e) Temporary sound barriers shall be placed between coastal sage scrub and development areas during grading activities. These barriers shall be 10-feet in height and (if made out of plywood) at least 1 -inch thick unless it can be demonstrated that thinner barriers result in equivalent noise reduction;
- (f) Invasive non-native plant species shall not be allowed within the landscape fuel modification plant palette;
- (g) Non-natives (especially fennel and mustard) shall be removed from the open space areas prior to and during construction of the residential development. Removal shall take place only during the non-breeding season of the California gnatcatcher and all removal shall be monitored by a biologist possessing a U.S. Fish and Wildlife Service 10(a)(1)(A) gnatcatcher recovery permit;
- (h) The following fuel modification zones shall be established to minimize the fire hazard on the site, while preventing take of gnatcatcher habitat from occurring:
 - i. Zone A shall not contain any combustible man-made features (gazebo/bench/trellis, etc.);
 - ii. Zone B – Area 1 (as modified by Special Condition 15) shall extend on both sides of the trail at its western end to connect the existing coastal sage scrub strips. A drip irrigation system shall be placed within the entire B Zone for native plant establishment. A second irrigation system shall include a full overhead spray system for intermittent (emergency) use as prescribed by the Orange County Fire Authority (OCFA);
 - iii. All non-native vegetation within Zone B shall be removed. All existing native vegetation shall remain. Zone B shall be planted with native plants known to occur within the coastal sage scrub plant community. All invasive/non-native plants in Zone B shall be removed on a regular basis. However, this activity shall only occur outside the nesting season of the California gnatcatcher. No thinning of native plant material shall occur within this zone. There shall be 85-90% ground cover of native plant species after 5 years.
 - iv. Zone C shall occur on the natural slopes immediately adjacent to the Zone B and shall wrap around the outside perimeter of the existing polygons of coastal sage scrub. This area shall contain a temporary drip irrigation system or DriWater for plant establishment only. Within Zone C, 100% of the non-native grasses and forbs existing within this areas shall be removed. No removal of native species shall occur. This area shall be planted with native plants known to occur within the coastal sage scrub plant community. Native

planting shall be widely spaced so as not to result in greater than 50% cover at maturity. All invasive/non-native plants from this area shall be removed on a regular basis but not during the nesting season of the gnatcatcher. The native vegetation that has become re-established will be thinned, if necessary, to meet the OCFA 50% maximum coverage requirement;

- v. Zone D will occur on the natural slopes immediately adjacent to the C Zone. This area will contain a temporary drip irrigation system or DriWater for plant establishment only. Within Zone D, 100% of the non-native grasses and forbs existing within this area shall be removed. This area shall be planted with native plants known to occur within the coastal sage scrub plant community. All invasive/non-native plants within this area shall be removed on a regular basis, but not during the nesting season of the gnatcatcher. The native vegetation that has become re-established may be thinned, if necessary, to meet the OCFA 70% maximum coverage requirement.
 - vi. Zone E extends north from Zone D to include the remainder of the open space areas on the project site. Invasive/non-native species within the remainder of the open space areas on the project site shall be removed.
 - vii. Artemesia Californica Zone - the applicant shall restore 0.31 acres of coastal sage scrub. This restoration shall occur immediately adjacent to CSS Stand 2. A temporary irrigation system shall be installed or DriWater will be used that provides for plant establishment. All invasive/non-native plants from this area shall be removed on a regular basis. No thinning of native plant material shall occur within this zone.
 - viii. Exotic plant species removal activities shall occur once a year outside the nesting season of the gnatcatcher. The removal of non-native plants shall occur for five consecutive years. During the five-year implementation period for the above restoration and fuel management plan, annual status reports shall be included with the annual report prepared for the wetland enhancement plan.
- (i) The following phasing of work shall be implemented to minimize disturbance to the gnatcatcher:
- i. Targeted, but limited hand removal and spraying of invasive exotics such as mustard (Brassica Sp.), fennel (Foeniculum vulgare), and artichoke thistle (Cynara cardunculus) will commence outside the gnatcatcher breeding season prior to commencement of the residential development;
 - ii. Establishment of the irrigation system, outplanting of container stock, and removal of exotic species as outlined for each fuel modification zone will commence after the initiation of fall rains, or November 1st, whichever is sooner.
 - iii. Site construction and grading may begin after the establishment of sound barriers as described above. Sound barriers will extend across the site and will be situated north of and adjacent to the trail. These will remain in place until the completion of the housing, trail and fence construction.
 - iv. Trail and fence construction shall begin after the work in the open space, outlined above, is completed. This construction shall not occur during the gnatcatcher breeding season.
- (j) Future maintenance of fuel modification zones shall include the following:
- i. After final installation and monitoring of the fuel modification plant palette has been completed, all future maintenance in the fuel modification zone requiring vegetation thinning or pruning will be done outside of the breeding season of the gnatcatcher (February 15 - August 30);
 - ii. Future maintenance of the fuel modification zone shall be supervised and monitored by a biologist possessing a U.S. Fish and Wildlife Service 10(a)(1)(A) gnatcatcher recovery

- permit. The biologist shall ensure that vegetation modification is conducted in such a way that minimizes impacts to gnatcatchers.
- iii. All future maintenance activities shall be accomplished using hand tools only;
 - iv. The successors in interest (e.g. Homeowners Association) shall be made aware of the requirements of this permit and shall implement the requirements.
- (k) The applicant shall preserve in place the existing coastal sage scrub located within proposed Lots 7 and 8 of VTTM 14605;
 - (l) Outdoor cats are prohibited. The Community Codes and Restrictions (CC & Rs) shall include a provision prohibiting outdoor cats.

17. PUBLIC TRAIL EASEMENT

- A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, and in order to implement the applicant's proposal, the applicant shall submit to the Executive Director for review and approval evidence that applicant has executed and recorded an irrevocable offer to dedicate an easement for public access in accordance with the terms of the Project Description as proposed by the applicant and described in letters from the applicant's agent dated September 26, 2000 and March 22, 2001 and shown on VTTM 14605 and as modified by Special Conditions 14, 15 and 16 of this permit amendment.

Any future development that is proposed to be located either in whole or in part within the area described in the recorded offer of dedication shall require a Commission amendment, approved pursuant the provisions of 14 CCR § 13166, to this Permit. This requirement shall be reflected in the provisions of the recorded offer.

18. CONFORMANCE OF DESIGN AND CONSTRUCTION PLANS TO GEOTECHNICAL REPORT GEOLOGIC HAZARD

- A. All final design and construction plans, including foundations, grading and drainage plans, shall be consistent with the requirements of the special conditions of this permit amendment and all recommendations contained in the Engineering Geologic Report titled Geotechnical Report for Grading Design Tentative Tract 14605, Hillside Village South, Dana Point, California by AGRA Earth & Environmental, Inc. of Anaheim, California dated March 20, 2000; the geologic letter report titled Geotechnical Review of Proposed Improvements to Tract 14604 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000; and the geologic letter report titled Geotechnical Review of Proposed Wetlands Area, Lot 8 Tract 14605 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the Executive Director's review and approval, evidence that an appropriate licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all of the recommendations specified in the above-referenced geologic evaluation approved by the California Coastal Commission for the project site.
- B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

19. ASSUMPTION OF RISK, WAIVER OF LIABILITY AND INDEMNITY

- A. By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from landslide, slope failures, erosion, and earth movement; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to accept sole responsibility for the removal of any structural or earth debris resulting from landslides, slope failures, erosion, and earth movement on the site from any public accessway or any adjacent properties including the Salt Creek Trail or Salt Creek itself; and (v) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- B. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director incorporating all of the above terms of this condition. The deed restriction shall include a legal description of the applicant's entire parcel. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

20. LOCATION OF DEBRIS DISPOSAL SITE

PRIOR TO ISSUANCE OF A COASTAL DEVELOPMENT PERMIT, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the excess soil, demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

21. WATER QUALITY

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final Water Quality Management Plan (WQMP) designed to mitigate stormwater runoff and nuisance flow from development on Vesting Tentative Tracts 14605 and 14604. The final WQMP shall include structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater and nuisance runoff leaving the developed site. The final plan shall be reviewed by the consulting engineering geologist to ensure conformance with geotechnical recommendations. The final plan shall demonstrate substantial conformance with the Water Quality Management Plan (WQMP), Tract 14605, prepared by Hunsaker & Associates Irvine, Inc. of Irvine, California, dated October 5, 2000, and the following requirements:
1. Post-development peak runoff rates and average volume from the developed site shall not exceed pre-development levels for the 2-year 24-hour storm runoff event;
 2. Post-construction treatment control BMPs shall be designed to mitigate (treat, infiltrate or filter) stormwater runoff from each storm event, up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor, for flow-based BMPs;
 3. BMPs to achieve the requirements of items 1 and 2 above shall include, where feasible, but are not limited to: a) use of efficient irrigation systems; b) use of drought tolerant or native planting material in common areas; c) regular street sweeping (vacuum regenerative type); d) use of detention basins and/or an energy dissipater in association with any discharges to Salt Creek; e) use of alternative materials for surfaces such as porous materials (crushed gravel, concrete grid, cobblestones) to allow increased percolation of runoff into the ground; f) minimization of the quantity of paved surfaces by vegetating or using permeable material in roadway medians and in all setbacks; g) direction of runoff to permeable areas, where feasible;
 4. The approved WQMP shall be implemented prior to or concurrent with the construction of the proposed residential development. The approved BMPs and other measures included in the final WQMP shall be in place and functional prior to the issuance of the first residential building permit within Vesting Tentative Tract 14605.
 5. All structural and non-structural BMPs shall be maintained in a functional condition throughout the life of the approved development. Maintenance activity shall be performed according to the recommended maintenance specifications contained in the California Stormwater BMP Handbooks (California Stormwater Quality Task Force, 1993) for selected BMPs. At a minimum, maintenance shall include the following: (i) all structural BMPs shall be inspected, cleaned and repaired, as needed prior to the onset of the storm season, no later than October 1st of each year and (ii) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system and restoration of the eroded area. Should repairs or restoration become necessary, prior to commencement of such repair or restoration work, the applicant shall submit a

repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work;

6. A line item shall be identified separately in the Community Codes & Restrictions (CC & Rs) for the homeowners association budget which specifically addresses the on-going long-term operating costs for inspection, maintenance and repair of water quality facilities;
- B. Any changes to the structures outlined in the Water Quality Management Plan, (WQMP) prepared by Hunsaker & Associates Irvine, Inc. of Irvine, California, dated October 5, 2000, including changes to the footprint of any such structures, necessary to accommodate the requirements of subsection A of this condition, shall require an amendment to this coastal development permit, unless the Executive Director determines that no amendment is required.
- C. The permittee shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the requirements outlined in subsections A., B., and C. of this condition. The deed restriction shall include legal descriptions of both the applicant's entire parcel and the deed restricted area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

22. PERMIT COMPLIANCE

All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth herein. Any deviation from the approved plans must be reviewed and approved by the Executive Director and may require Commission approval.

23. STORAGE OF CONSTRUCTION MATERIALS, MECHANIZED EQUIPMENT AND REMOVAL OF CONSTRUCTION DEBRIS

The permittee shall comply with the following construction-related requirements:

- (a) No construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to wave erosion and dispersion;
- (b) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction;
- (c) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project.

Construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone, pursuant to Special Condition No. 20.

IV. FINDINGS AND DECLARATIONS:

The Commission hereby finds and declares:

A. PROJECT LOCATION, BACKGROUND, AND AMENDED PROJECT DESCRIPTION

The proposed project is a residential subdivision located in the Monarch Beach area of the City of Dana Point, Orange County, California (Exhibit 1). The subject site is a 23.1 acre upland area roughly bounded by Pacific Coast Highway on the southwest, a shopping center (herein "Monarch Bay Plaza") and condominium complex to the northwest (Monarch Bay Villas), a multi-family residential development known as the Bluffs Apartments to the north, Salt Creek and the Salt Creek Trail to the southeast, and the Links at Monarch Beach golf course to the southeast (Exhibit 1, 2, 4, and 5). This proposed amendment expands the original scope of the project area to include the original 14.3 acre portion of the site variously known as "Site 3" and "Clubhouse Village South" in previous permit actions, and presently known as "Hillside Village South," and the 8.8 acre area which has been known as "Site 16" in P-79-5539, and "Clubhouse Village North" or "VTTM 14604" in CDP 5-92-186. The 14.3 acre portion of the site will be herein called the "southern" portion of the site or VTTM 14605, and the 8.8 acre portion of the site will be called the "northern" portion of the site or VTTM 14604. The applicant is proposing to abandon all development rights which may exist under CDP 5-92-186 in favor of the development now proposed. The subject site is not located between the first public road and the sea.

The southern portion of the site consists of at least two graded pads separated by a sharp, graded elevation change (Exhibit 2, pages 1 and 2, and Exhibit 7). The topography is oriented and drops toward Pacific Coast Highway from elevation 150 feet at along its border with the northern portion of the site to elevation 65 feet at the toe of the southern portion of the site. Topographic conditions at the site have been altered from their natural state by mass grading activity reported to have occurred in 1973, 1980, and 1983. A wetland is present near the northwestern property boundary at an elevation of approximately 113 feet above sea level, adjacent to the Monarch Bay Plaza shopping center. Topography in the immediate vicinity of the wetland is relatively flat.

The northern portion of the site is a relatively steep hill ranging in elevation of 110 feet along its border with the Salt Creek Trail to 205 feet adjacent to the Monarch Bay Villas condominium complex. This portion of the site is oriented toward Salt Creek, the Salt Creek Trail, and the golf course. On this part of the site there are stands of coastal sage scrub along the boundary between the northern and southern portions of the site. In addition, there are stands of coastal sage scrub at the northern boundary of the northern portion of the site. The stands of coastal sage scrub are presently occupied by California gnatcatcher.

Coastal Development Permit 5-92-188, as approved on August 11, 1992 and amended on March 14, 1996, approved the subdivision and construction of 111 attached residential units on 14.3 acres (Exhibit 12). The proposed residential units were two to three stories tall (28 to 41 feet high) and had floor areas from 1,800 to 2,700 square feet. In addition, the project included 118,000 cubic yards of grading consisting of 85,000 cubic yards of cut and 33,000 cubic yards of fill.

The proposed amendment would change the residential subdivision from 111 units to 48 units on 14.3 acres; change the height of proposed residences to 28 to 32 feet tall; change the building floor areas to 2,830 to 4,999 square feet; and change grading to 85,000 cubic yards of cut and 60,000 cubic yards of fill plus 150,000 cubic yards of remedial grading. This development would be concentrated on the southern 14.3 acre portion of the site (Exhibit 2).

The proposed project would also add the construction of a 4 foot wide public trail which would connect the existing public Salt Creek trail to the existing Monarch Bay Plaza shopping center (herein known as 'Trail Segment A') (Exhibit 2, page 2 and Exhibit 4). Another leg of the proposed trail would connect an existing residential community to the Monarch Bay Plaza shopping center (herein known as 'Trail Segment B'). Trail Segment B is located along the northwestern portion of the project area within the northern 8.8 acre portion of the site (i.e. VTTM 14604).

The applicant is also proposing to implement an on-site wetland enhancement program to protect and enhance a 0.24 acre wetland which has emerged on the project site since the original approval of the residential development. The proposed wetland enhancement program is contained in the document titled *Conceptual Enhancement/Buffer Program for the Hillside Village South Project, Vesting Tentative Tract #14605*, prepared by BonTerra Consulting, dated July 12, 2000 and received in the Commission's South Coast District Office on March 7, 2001. The enhancement program proposes to remove non-native plant species, introduce native wetland plant species to the wetlands, and establish a 25 foot wide buffer of planted native vegetation (Exhibit 6).

In addition, the applicant is proposing a fire fuel modification program and habitat enhancement program which include non-native brush clearance and establishment of native plant landscaping in certain cleared areas (Exhibits 3 and 4). The fuel modification and habitat enhancement program is contained in the document titled *Precise Fuel Modification Plan* revised January 24, 2001, and

received on March 6, 2001. This fuel modification and habitat enhancement program would occur on the 8.8 acre northern portion of the site. In addition, the applicant is proposing to dedicate an open space easement over the entire 8.8 acre northern portion of the site (Exhibits 1 and 5).

The emergence of wetlands on the project site was noted by a field visit to the site by Commission staff in October 1998. At the time, the property owner was requesting a time extension for Coastal Development Permit 5-92-188. Due to the presence of the wetland vegetation, Commission staff determined that changed circumstances existed which affected the project's consistency with the City's Local Coastal Program and the Chapter 3 policies of the Coastal Act. Commission staff moved forward with agendizing a material extension request in May 1999. However, prior to the hearing, the applicant advised Commission staff of their intention to submit a request for an amendment to Coastal Development Permit 5-92-188 which would redesign the project to avoid impacts to wetlands on the project site. The subject amendment is the redesigned project. Following action on this amendment, the Commission will act upon pending extension requests 5-92-188-E5, 5-92-188-E6, and 5-92-188-E7, which would extend the permit through August 11, 2001.

The proposed residential development is a portion of the partially constructed 225 acre master-planned resort, recreational, commercial and residential community known as Monarch Beach which was conceptually approved by the Commission in 1979 under Coastal Development Permit P-79-5539 (Exhibit 12, pages 20-29). CDP P-79-5539 has become known as the "Master Permit" for the area. Major special conditions of the "Master Permit" include: a requirement that each construction project obtain a separate development permit (a.k.a. "Type 1" and "Type 2" permits), provisions for low and moderate cost housing (25% of total), low and moderate cost overnight accommodations, and monetary contributions into a "Coastal Access Fund" in conjunction with the construction of the residential units. The money paid into the "Coastal Access Fund" was to be used to support recreational transit services. Additional special conditions imposed by the Commission included: a deed restriction requiring that the golf course and other recreational facilities be open to the public on a daily fee basis, public parking, an open space easement over the golf course area, a public trail system to provide beach access, and a signage program advertising that the facilities are open to the general public.

Coastal Development Permit 5-92-188 is a subsequent permit to P-79-5539 (i.e. a so-called "Type I" permit). In addition to the residential community approved by Coastal Development Permit 5-92-188 for the subject site, the Commission has approved several coastal development permits for the master-planned community. Each of these permits is subsequent to the "master" permit, P-79-5539, and include coastal development permits for the expansion of a previously approved public community park (5-92-157, since expired), a golf course (P-79-5539, 5-91-191, 5-91-742, 5-92-092, 5-92-158) and golf clubhouse (5-96-006 and amendments, which has been built), a 400-key resort with related visitor serving facilities (5-92-168 and amendments, which is presently under construction), and 55 residential units on VTTM 14604 (5-92-186, which has not been built). The Monarch Beach Resort development area has been under the ownership of several entities since the approval of Coastal Development Permit P-79-5539, including AVCO Community Developers, Stein-Brief, Hemmeter, Qintex Australia Ltd., Nippon-Shimpan Ltd. with subsidiary Monarch Bay Resort, Inc., and the current owner and applicant CPH Resort I, LLC to whom the subject permit was transferred on September 16, 1998.

As noted above, under this amendment the applicant has expanded the scope of the area subject to CDP 5-92-188 to include the portion of the site covered by CDP 5-92-186. Meanwhile, a permit extension is pending for Coastal Development Permit 5-92-186. However, in a letter dated

September 25, 2000 and re-affirmed in a letter dated March 22, 2001, the applicant has indicated their intention to withdraw their permit extension application provided the development proposed under Coastal Development Permit Amendment 5-92-188-A4 is approved. The letter dated March 22, 2001 further states that it is understood that 5-92-186 would be void upon the approval of 5-92-188-A4. Since the Commission's regulations mandate that there may not be more than one coastal development permit for development of the same site, and in order to implement the applicants proposal, the Commission imposes Special Condition 9 which states that approval of this amendment voids all development rights which may exist under Coastal Development Permit 5-92-186. The extinguishment of 5-92-186 along with the proposed open space dedication over the area covered by 5-92-186 eliminates the construction of 55 residential units and 119,000 cubic yards of grading on this site. Therefore, under the previous approvals of 5-92-188 and 5-92-186, the site would have contained 166 residential units and involved 237,000 cubic yards of grading (not including remedial grading), whereas the proposed amendment reduces the amount of development to 48 total residential units and 145,000 cubic yards of grading (not including remedial grading).

B. BIOLOGICAL RESOURCES

The approximately 23.1 acre site is located between a shopping center and residential community and Salt Creek. The site has been previously graded. Despite the proximity to urban development and previous grading, there are habitat areas on the site including a small wetland (approximately 0.24 acres) as well as 3.12 acres of coastal sage scrub, 6.66 acres of annual grassland, and 0.26 acres of ornamental vegetation (Exhibit 5). While there is appropriate habitat on the site, a trapping survey for Pacific pocket mouse (*Perognathus longimembris pacificus*) conducted in July 1998 did not catch any of this species. Meanwhile, a survey for California gnatcatcher (*Poliophtila californica californica*) conducted in 1999 indicates that there are at least two pairs of gnatcatchers on the project site.

The City of Dana Point's certified local coastal program contains a number of policies related to the protection of sensitive habitat areas.

Policy 8.15 of the Land Use Element of the certified LCP states:

Preserve, maintain, and where feasible enhance and restore, the riparian habitat, coastal sage scrub habitat, and other environmentally sensitive habitat areas along Salt Creek.

Policy 1.5 of the Conservation/Open Space Element of the certified LCP states:

Retain, maintain, protect, and enhance existing riparian habitat adjacent to drainage courses, channels, and creeks through methods such as, but not limited to, the establishment of buffer areas adjacent to such habitats. (Coastal Act/30231)

Policy 1.7 of the Conservation/Open Space Element of the certified LCP states:

Maintain, and where feasible, restore the biological productivity and the quality of coastal waters, creeks, and groundwater, appropriate to maintain optimum populations of marine organisms and to protect human health. Measures including, but not limited to, minimizing adverse effects of waste water discharges, controlling runoff, preventing the depletion of groundwater supplies, preventing substantial interference with surface water flow, maintaining vegetation buffer areas protecting riparian habitats, minimizing alteration of natural streams, and street sweeping, shall be encouraged. (Coastal Act/30231)

Policy 3.1 of the Conservation/Open Space Element of the certified LCP states:

Environmentally sensitive habitat areas, including important plant communities, wildlife habitats, marine refuge areas, wildlife movement corridors, wetlands, and significant tree stands, such as those generally depicted on Figure COS-1, shall be preserved. Development in areas adjacent to environmentally sensitive habitat areas shall be sited and designed to prevent impacts which would significantly degrade those areas through such methods as, the practice of creative site planning, revegetation, and open space easement/dedications, and shall be compatible with the continuance of those habitat areas. A definitive determination of the existence of environmentally sensitive habitat areas on a specific site shall be made through the coastal development permitting process. (Coastal Act/30230, 30240)

Policy 3.4 of the Conservation/Open Space Element of the certified LCP states:

Ensure urban use of open space lands that have conservation or open space easements is limited to only those uses expressly allowed by the easements. Document those easements to increase knowledge of their existence. (Coastal Act/30240)

Policy 3.7 of the Conservation/Open Space Element of the certified LCP states:

Environmentally sensitive habitat areas (ESHA) shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. (Coastal Act/30240)

Policy 3.9 of the Conservation/Open Space Element of the certified LCP states:

Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes. (Coastal Act 30230)

Policy 6.1 of the Conservation/Open Space Element of the certified LCP states:

Mitigate the impacts of development on sensitive lands such as, but not limited to, steep slopes, wetlands, cultural resources, and environmentally sensitive habitat areas through the development review process. (Coastal Act/30233, 30240, 30244, 30253)

Policy 6.5 of the Conservation/Open Space Element of the certified LCP states:

Preserve and protect open space, steep slopes, cultural resources, and environmentally sensitive habitat areas through open space deed restrictions, dedication, or other similar means as a part of the development and subdivision review process. (Coastal Act/30250)

1. Wetlands

One of the main reasons for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their important ecological function. First and foremost, wetlands provide critical habitat, nesting sites, and foraging areas for threatened or endangered species. Wetlands also serve as migratory resting spots on the Pacific Flyway a north-south flight corridor extending from Canada to Mexico used by migratory bird species. In addition, wetlands serve as natural filtering mechanisms to help remove pollutants from storm runoff before the runoff enters into streams and rivers leading to the ocean. Further, wetlands serve as natural flood retention areas.

Another critical reason for preserving, expanding, and enhancing Southern California's remaining wetlands is because of their scarcity. As much as 75% of coastal wetlands in southern California have been lost, and, statewide up to 91% of coastal wetlands have been lost.

Wetlands are defined in the City of Dana Point certified Local Coastal Program as follows:

Wetlands – any land area which may be covered periodically or permanently with shallow water including, but not limited to, saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps and mudflats.

In October 1998, Commission staff noted the presence of a wetland on the project site. No wetland was identified nor analyzed in the August 1992 approval of Coastal Development Permit 5-92-188 or any previous amendments. Two assessments were submitted which document the presence of wetlands at the site. The first is *Biological Assessment of the Disturbed/Freshwater Marsh Habitat on Monarch Beach Resort Project, City of Dana Point, Orange County, California* dated October 28, 1998, by Bonterra Consulting of Costa Mesa. The second assessment is *Wetlands Determination, Biological Assessment and Jurisdictional Delineation of Artificially-Created Freshwater Marsh on Monarch Beach Resort Site, Dana Point, California* dated December 22, 1998 by Glenn Lukos Associates of Laguna Hills.

The biological assessments state that a 0.18 to 0.24 acre disturbed freshwater marsh is present on the subject site. This freshwater marsh contains several freshwater marsh plant species including cattails (*Typha* sp.), bulrushes (*Scirpus* sp., *Cyperus* sp.), and wild celery (*Apium graveolens*). Other plant species include rabbitsfoot grass (*Polypogon monspeliensis*), brass buttons (*Cotula coronopifolia*), white watercress (*Rorippa nasturtium-aquaticum*), bristly ox-tongue (*Picris echioides*), and prickly sow thistle (*Sonchus asper*). Invasive non-native plant species were also present

including pampas grass (*Cortaderia selloana*) and African umbrella sedge (*Cyperus involucratus*). The source of water for the marsh is urban/landscape runoff discharged onto the site from a v-ditch originating from a nearby condominium complex and church.

a. Diking, Filling, or Dredging of Wetlands

The diking, filling, or dredging of wetlands is addressed in policy 3.6 of the Conservation/Open Space Element of the City of Dana Point certified Local Coastal Program, as follows:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall only be permitted in accordance with section 30233 of the Coastal Act (Coastal Act/30233)

Section 30233(a) of the Coastal Act states:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

Under the previously approved project, grading for the construction of roads and houses would have eliminated the wetlands which emerged on the project site after the August 1992 approval. However, the proposed amendment modifies the project in a manner which avoids the existing wetlands. Therefore, the project proposed under this amendment is consistent with Policy 3.6 of the Conservation/Open Space Element of the City of Dana Point certified Local Coastal Program and Section 30233(a) of the Coastal Act. In order to assure that no fill of wetlands occurs, the applicant must construct the project as proposed and conditioned herein. Therefore, the Commission imposes Special Condition 22.

b. Wetland Ecology and Buffers

Buffer areas are undeveloped lands surrounding wetlands. Buffer areas serve to protect wetlands from the direct effects of nearby disturbance. In addition, buffer areas can provide necessary habitat for organisms that spend only a portion of their life in the wetland such as amphibians, reptiles, birds, and mammals. Buffer areas provide obstructions which help minimize the entry of domestic animals and humans to wetlands. Buffers also provide visual screening between wetland species that are sensitive to human impacts, such as lighting. Buffers can also reduce noise disturbances to wetland species from human development.

Section 9.27.030(b) of the Implementation Plan for the City's certified LCP states:

(b) Wetland Resources. To protect and maintain the City's coastal wetland resources, a minimum 100-foot buffer area around all identified wetlands shall be provided as part of all allowable development within or adjacent to wetlands, unless both the California Department of Fish and Game and the U.S. Fish and Wildlife Service provide a written determination that a lesser buffer will provide adequate protection.

(1) To minimize the disturbance to a wetland from adjacent development, the following minimum requirements shall be incorporated into the design of a buffer area:

(A) Fences and/or natural barriers shall be provided to control the entry of humans and non-wetlands animal species into the wetland. The buffer shall also provide for visual screening in those cases where resident or migratory wetland species are particularly sensitive to human impacts. Development adjacent to wetlands shall be sited and designed to avoid excessive light or noise, where feasible. The use of walls, berms and other barriers shall be considered where excessive artificial light or noise is unavoidable.

(B) Buffers shall be designed, where necessary, to help minimize the effects of erosion, sedimentation, and pollution arising from urban and industrial activities. Any pollution control devices within the buffer area shall be maintained.

(C) Buffers shall provide habitat for species residing in the transitional zone between wetlands and uplands. The design of buffers should consider the movement of food and energy between habitats as well as the life cycles of organisms that feed or reproduce in the wetland but generally reside outside the wetland. Any revegetation work in the buffer area shall use native species from local sources.

(2) Uses Within Buffer Areas. Necessary pollution control devices and passive recreational uses shall be allowed within buffer areas but only if it can be shown that these uses will not have significant adverse impacts on the wetland ecosystem or the buffer's function as described in the above criteria. These uses shall be limited to bird

watching, walking, jogging, and bike riding, and may include the construction of paths and interpretive signs and display. Any paths constructed shall minimize adverse impacts to plants and animals in the buffer area.

The applicant is proposing a wetlands enhancement and buffer program that is contained in the document titled Conceptual Enhancement/Buffer Program for the Hillside Village South Project, Vesting Tentative Tract # 14605 prepared by BonTerra Consulting which was received in the Commission's South Coast District Office on March 7, 2001 (Exhibit 6). The enhancement program proposes to remove non-native plant species, introduce native wetland plant species to the wetlands, and establish a 25 foot wide buffer of planted native vegetation. The proposed buffer area would be planted with cottonwood trees, lemonade berry, Mexican elderberry, California sycamore, arroyo willow, black willow, and toyon with an understory of yerba mansa. A five-year maintenance program is proposed which would include weed control, irrigation, trash removal, protection of seeded and planted areas, plant replacement, fertilization, erosion control, and signage. At the end of the monitoring period the applicant is proposing to provide 90 percent relative native plant cover. Annual monitoring reports are proposed to be prepared.

The proposed 25 foot buffer is less than the 100 foot buffer normally required in the certified LCP. However, the California Department of Fish and Game and the U.S. Fish and Wildlife Service have reviewed the proposed wetland enhancement and buffer plan. In a letter dated January 25, 2001 from the California Department of Fish and Game and a letter dated February 2, 2001 from the U.S. Fish and Wildlife Service, these resource agencies have determined that the proposed 25 foot buffer will provide adequate protection to the wetland (Exhibit 11). In addition, the Commission's staff biologist has reviewed the plan and has determined that, in this case, the proposed buffer is adequate.

The proposed wetland enhancement and buffer program is necessary to establish the buffer required to protect the wetland. Therefore, in order to assure that the enhancement and buffer program is implemented, the Commission imposes Special Condition 10 which requires the applicant to implement the proposed plan. Special Condition 10 also requires that the wetland enhancement and buffer program is implemented prior to or concurrent with the commencement of construction of the remainder of the development. In addition, in order to assure that the Commission is advised of the outcome of the monitoring plan, the Special Condition 10 requires the applicant to submit a copy of the proposed annual status report to the Executive Director. Special Condition 10 also requires that the applicant or successor in interest comply with the proposed wetlands enhancement and buffer plan performance criteria that the buffer and wetlands enhancement area be biologically diverse and provide 90 percent relative native plant cover. If at the end of the proposed five year period, the performance criteria have not been met, the applicant or successor in interest shall provide an analysis to the Executive Director of why the plan did not succeed and the measures to be taken to ensure success. If at the end of the proposed five year period the performance criteria have not been met, the applicant or successor in interest shall seek an amendment for measures to ensure the success of the wetlands enhancement and buffer plan. Any changes to the approved wetlands enhancement and buffer plan, including but not limited to changes to the monitoring program to ensure success of the mitigation site, shall require an amendment to this permit from the Coastal Commission or written concurrence from the Executive Director that the changes do not require a permit amendment.

Also, the proposed project involves a subdivision of the property which creates a separate legal lot for the wetlands. Development not associated with the management of the wetland within this new

legal lot would have adverse impacts upon the wetland. For instance, construction of buildings on the lot would require the fill of wetlands which would be inconsistent with Policy 3.6 of the certified LCP. Other types of development could also result in a reduction in the size of the wetland buffer and/or have sedimentation impacts, noise and light glare impacts upon species utilizing the habitat, and removal of habitat. In order to assure that such development does not occur, the Commission imposes Special Condition 11 which requires the applicant to execute and record an open space deed restriction over Lot 8 of proposed VTTM 14605 (Exhibit 2, page 2). Special Condition 11 outlines the type of development which would be allowed within Lot 8 including development related to the maintenance of the wetland.

As will be noted more fully in the water quality section of these findings, the Commission is requiring the applicant to comply with certain water quality and runoff requirements. One such requirement is that post-development peak runoff rates and average volume from the developed site shall not exceed pre-development levels for the 2-year 24-hour storm runoff event. The applicant has suggested that compliance with this requirement may call for a detention basin, for which the wetland within proposed Lot 8 could be utilized. Commission staff's biologist has reviewed this suggestion and agrees that the wetland, in this case, would not be adversely impacted provided a pre-settlement basin were installed in order that sedimentation and erosion does not adversely impact the wetland. Therefore, the open space deed restriction required in Special Condition 11 would allow the construction and maintenance of a pre-settlement basin and/or associated structures within Lot 8 provided that such basin would not impact the wetland or other sensitive habitat, is compatible with the 25 foot buffer, and is sized and designed to avoid sedimentation and erosion impacts upon the wetland.

In addition, if construction equipment and staging is not appropriately managed, adverse impacts upon wetlands on the project site could occur. For instance, soil stockpiles could erode causing sedimentation of wetlands. In addition, if not sited appropriately, construction equipment and activity could cause trampling of the wetlands. Therefore, the Commission imposes Special Condition 13. Special Condition 13 requires that, prior to issuance of the coastal development permit amendment, the permittee shall submit a plan for the review and approval of the Executive Director which indicates that the construction staging area(s) and construction corridor(s) will avoid impacts to wetlands. The plan shall demonstrate that construction equipment or activity shall not occur outside the staging area and construction corridor identified on the site plan required by this condition and that construction equipment and activity shall not be placed in any location which would result in impacts to wetlands. The plan shall include, at a minimum, the following components: a site plan that depicts the limits of the staging area(s); construction corridor(s); construction site; the location of construction fencing and temporary job trailers with respect to existing wetlands.

As conditioned, the Commission finds the project consistent with the wetland resource protection policies of the certified Dana Point Local Coastal Program.

2. Upland Environmentally Sensitive Habitat Areas

Policies 3.1 and 3.7 of the Conservation/Open Space Element of the certified LCP requires that "Environmentally Sensitive Habitat Areas" be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas. On the project site, the habitat occupied by California gnatcatcher, including coastal sage scrub, is an environmentally sensitive habitat area (ESHA). Section 9.75.050 of the Implementation Plan of the certified LCP states that "Environmentally Sensitive Habitat Areas" are:

...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

“Coastal sage scrub” or “soft chaparral” is a general vegetation type characterized by special adaptations to fire and low soil moisture. The defining physical structure in CSS is provided by small and medium-sized shrubs which have relatively high photosynthetic rates, adaptations to avoid water loss, including drought deciduousness, and adaptations to fire, such as the ability to survive the loss of above-ground parts and resprout from root crowns. In addition to twenty or so species of perennial shrubs, such as California sage brush, CSS is home to several hundred species of forbs and herbs, such as the California poppy.

About 3 acres of various types of coastal sage scrub habitats are present on the project site. The stands are scattered throughout the northern portion of the site and interspersed with non-native grasslands. The southern relatively flat portions of the site are disked and, with the exception of the 0.24 acre wetland, do not support perennial vegetation. Despite the fragmented and degraded nature of the scrub habitats that are present, they are occupied by the California gnatcatcher (federally designated as “threatened”), a species dependent on scrub habitats. The presence of two pairs of gnatcatchers was documented by the applicant in 1999.

Coastal sage scrub, as a habitat type, can qualify as ESHA regardless of the presence of California gnatcatchers. Indeed, if the gnatcatcher became extinct, CSS could still be ESHA. Section 9.75.050 of the Implementation Plan of the certified LCP states that “Environmentally Sensitive Habitat Areas” are ‘any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.’ It is probably universally accepted among specialists that CSS is easily degraded and in fact has been destroyed by development over large areas of the state.¹ About 2.5% of California’s land area was once occupied by CSS. In 1981, it was estimated that 85% to 90% of the habitat type had been destroyed state-wide and, in 1991, it was estimated that San Diego, Orange, and Riverside counties had lost 66% of their CSS.² Current losses are higher and losses in the coastal zone have undoubtedly been much higher. Compared to its natural distribution and abundance, CSS is in decline and it is in decline because it has been destroyed by human activities. Unfortunately for the habitat type, it occupies shallow slopes on lower elevations of coastal mountain ranges, areas that are prized for development. Besides being in decline, CSS provides important ecological functions. It can be home to some 375 species of plants, many of which are local endemics. About half the species found in CSS are also found in chaparral after fire, but disappear from that habitat after about 7 years. CSS may provide a spatial refuge for those herbs between fires.³ Nearly, 100 species of rare plants and animals are obligately or facultatively associated with coastal sage scrub habitats.⁴ In addition, coastal sage scrub is often the natural upland habitat adjacent to wetland habitats such as coastal salt marshes and vernal pools, and is important to species that require both habitat types to complete their life cycle.

¹ Mooney, H.A. 1977. Southern Coastal Scrub. Pages 471-489 in M.G. Barbour and J. Major, eds. Terrestrial Vegetation of California. Davis, U.C. Press; Westman, etc

² Westman, W.E. 1981. Factors influencing the distribution of species of California coastal sage scrub. Ecology 62:439-455; Michael Brandman Assoc. 1991. A rangewide assessment of the California gnatcatcher. A report to the Building Industry Association of Southern California cited by J.E. O’Leary, et al. 1994, below.

³ Westman, W.E. 1979. A potential role of coastal sage scrub understories in the recovery of chaparral after fire. Madroño 26:64-68.

⁴ O’Leary, J.F., et al. 1994. Bibliographies on coastal sage scrub and other related malacophyllous shrublands of Mediterranean-type climates. California Wildlife Conservation Bulletin No. 10.

There are many bases for designating CSS as ESHA. For example, even degraded coastal sage scrub may provide essential habitat for species that require both CSS and saltmarsh plants to complete their life cycle. In the heart of urban environments, CSS may still support many bird species when there is sufficient open space to include coyotes in the system. High quality coastal sage scrub also may be of significant value in heavily urbanized areas by contributing to the local diversity of vegetation, even if it is so isolated as to lose much of its wildlife value. In addition, some categories of coastal sage scrub, such as southern coastal bluff scrub, are so rare that they may be inherently deserving of protection wherever they are found. Of course, if a stand of coastal sage scrub is home to listed species, the presumption should generally be that the habitat is ESHA in the absence of compelling evidence to the contrary.

There are several types of coastal sage scrub present at the project site. Recent discussions between Commission staff and scientists with the U.S. Fish and Wildlife Service indicate that this coastal sage scrub has supported successful reproduction by California gnatcatcher, based on existing conditions. Given this fact, the areas of CSS and other habitat within the use area of the gnatcatchers is ESHA.

In another recent matter reviewed by the Commission (Application 5-99-260) it was suggested that if CSS were acting as an ecological “sink”, then preservation of the CSS would be detrimental to the gnatcatcher species. In this context, a population ‘sink’ is a habitat patch where mortality exceeds reproduction, and a ‘source’ is a habitat patch where reproduction exceeds mortality. A collection of such patches linked by migration is called a metapopulation. The dynamics of this kind of spatially structured population has been studied by many scientists. The studies demonstrate that the dynamics are extremely complicated and sensitive to changes in all the underlying ecological assumptions. Commission staff biologists have spoken with other population biologists⁵ about the idea that degraded habitat patches that are perceived to be ‘sinks’ are bad for a species, increasing its risk of extinction. There was agreement among them that this is a risky assumption, and that in the absence of more information this certainly does not constitute a justification for assuming that the habitat is not performing important ecological functions for the species in question. There are really two issues that must be considered. First, is there strong evidence that a particular habitat is actually behaving as an ecological sink? And, second, are sinks always bad for the species viability?

There are several reasons why it should not be concluded that ‘sink’ habitats are always bad:

- 1) In nature, there are very few, habitats where there is only mortality and no production of young. So if the sources are filled, the presence of sinks will produce some additional offspring.
- 2) Much larger populations can be supported in a combination of sources plus additional sinks than in only sources alone.
- 3) Larger metapopulations are more resistant to extinction.
- 4) Most of the source/sink concept is based on equilibrium populations and this is unrealistic.
- 5) Changes in a single factor, such as the way populations respond to density, can result in a change from sink to source. The name ‘pseudo-sink’ has been proposed for this situation.
- 6) The source/sink concept is based on a single species, and when species interactions are considered, dynamics can change completely.
- 7) The presence of sinks may improve genetic diversity by presenting the species with a broader array of selection environments.

⁵ Roland H. (Rollie) Lamberson, Dept. of Mathematics, Humboldt State University; James A. Powell, Dept. of Applied Math. & Statistics, Utah State University; and, H. Resit Akcakaya, Applied Biomathematics, Setauket, NY

- 8) Sinks may serve as 'stepping stones' in a metapopulation spatial structure creating a much larger metapopulation than would otherwise be possible.

Like most simplifications, the source/sink theory represents an idealization of reality. Detailed structure based on actual data needs to be included to understand real ecological systems. So, it is not only difficult to determine if mortality actually exceeds reproduction in a habitat, it is also risky to conclude that the presence of perceived sink habitat will have a negative effect on a species or increase its likelihood of extinction.

The Orange County gnatcatcher population seems to function as a typical metapopulation. Discussions with several gnatcatcher biologists have confirmed that many fragmented CSS habitats along the urban coast have gnatcatchers that fledge young⁶. One example at Palos Verdes is an isolated metapopulation 45 km from the nearest other CSS habitat, and it has persisted there since its isolation due to urbanization 50-75 years ago. It consists of several small patches each consisting of a few pairs of gnatcatchers. Another example is the proposed project site where there are very small CSS fragments surrounded by urbanization that has had breeding gnatcatchers for 10 years. In addition, data has shown⁷ that gnatcatcher fledglings typically move an average distance of 2.5 km (~1.6 miles), and they are often observed to go 5-6 miles. These measurements were made in typical fragmented habitat. There are CSS habitat areas within the gnatcatchers dispersal range including the Dana Point Headlands (approximately 1 mile downcoast) and within the Salt Creek corridor immediately adjacent to the site.

There are long-term observations of 2 breeding pairs of California gnatcatchers at the site and there is other CSS habitat within juvenile dispersal distance. This habitat appears to be part of a functioning metapopulation and so performs a significant ecological function. Therefore, the Commission finds that the coastal sage scrub and associated habitats that are used by California gnatcatchers at the project site constitute ESHA.

The certified local coastal program contains policies requiring the preservation, maintenance, enhancement, and restoration of coastal sage scrub and other ESHAs along Salt Creek, the establishment of buffer areas adjacent to sensitive habitats, and the use of easements or other legal means to protect sensitive habitat areas. The applicant has proposed measures which contribute to the consistency of the project with these policies. For instance, recognizing the sensitivity of the coastal sage scrub and California gnatcatcher occupied habitat, the applicant is proposing to record an open space easement over the northern portion of the subject site where the coastal sage scrub and California gnatcatcher reside. Outside the proposed open space area, the applicant is proposing to retain a patch of coastal sage scrub along the northwestern border of the site between the open space area and the wetland. In addition, the applicant is proposing to comply with the requirements outlined by the U.S. Fish and Wildlife Service in a letter dated February 2, 2001 (Exhibit 11) to protect California gnatcatcher during the construction and operation phases of the development including: placement of fencing between the proposed trail and dedicated open space area; signage regarding entry to habitat areas; direction of lighting away from the open space area; installation of temporary sound barriers and use of hospital grade mufflers during construction; eradication of non-native plant species within certain portions of the open space area; restoration of 0.31 acres of coastal sage scrub; avoidance of exotic plant control and any fuel modification activities during the

⁶Jonathan L. Atwood, Antioch of New England Grad. School; Pat Moch, URS Corporation; and, Kevin Clark, USFWS, Carlsbad.

⁷Akakaya, R. and J. L. Atwood. 1997. A habitat-based metapopulation model of the California gnatcatcher. Conservation Biology 11:422-434..

gnatcatcher breeding season (February 15 through August 30); avoidance of exotic plant control, planting of native plants, and placement of irrigation systems in the open space area until after the first fall/winter rain or November 1st (whichever is earlier) to avoid disturbance to gnatcatchers during periods of low resource availability; all maintenance in the open space area shall be supervised by a biologist with a USFWS gnatcatcher recovery permit; advising the future homeowners association of the above requirements; and prohibition of outdoor cats in the Covenants, Codes, and Restrictions of the community. These proposed measures contribute to the projects consistency with the resource protection policies of the certified LCP, therefore, the Commission imposes Special Condition 12, Special Condition 15, and Special Condition 16 which requires implementation of the proposed measures, incorporation of the proposed measures in the fuel modification plan, and evidence of dedication of the open space easement.

Policies 3.1 and 3.7 of the Conservation/Open Space Element of the certified LCP require that development in areas adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade these areas, and be compatible with the continuance of the habitat areas. Typically, to ensure compliance with these policies, development (aside from resource dependent uses) must be located outside of all environmentally sensitive habitat areas. Further, development adjacent to an ESHA must provide a setback or buffer between the ESHA and the development of an adequate size to prevent impacts that would degrade the resources. The width of such buffers would vary depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to disturbance.

The proposed project would involve grading immediately adjacent to the coastal sage scrub habitat that is occupied by California gnatcatcher. This grading is occurring to create pads for the construction of houses as well as to construct Trail Segment A, a public trail linking the Salt Creek Trail to the Monarch Bay Shopping Center. Commission staff's biologist has reviewed this proposal and recommends that, in order to minimize disturbance to California gnatcatcher, only minor surficial grading to accommodate the construction of the public trail be allowed within 50 feet of the edge of the two largest stands of coastal sage scrub which are adjacent to the development area (herein 'CSS Stand 1' and 'CSS Stand 2') (Exhibits 4 and 5). The public trail would be allowed to be constructed within the 50 foot grading buffer area, however, the edge of the proposed trail shall be no closer than 25 feet to the edge of CSS Stands 1 and 2. If anything more than minor surficial grading is necessary to construct any portion of the public trail, the trail or portions thereof would need to be moved out of the 50 foot grading buffer area. This recommendation would require the elimination of the relatively steep manufactured slope adjacent to the coastal sage scrub and the minor realignment of the proposed public trail and adjacent houses and building pads. Therefore, the Commission imposes Special Condition 14 which imposes a minimum 50 foot wide grading buffer area which would allow only minor surficial grading (less than 6 inches change from existing grade using only hand tools). In addition, Special Condition 15 requires the applicant to submit a revised grading plan showing the elimination of all significant grading within 50 feet of the edge of CSS Stands 1 and 2.

In addition, Special Conditions 14 and 15 requires that no structures, including any public trail, fences, or signs, shall be constructed within 25 feet of the edge of CSS Stand 1 and CSS Stand 2 (as labeled on Exhibit 4). A public trail and habitat management related development such as fences and signs shall be allowed within a 25 foot zone adjacent to the 25 foot wide no structure zone (the no-structures and minor-structure zone is a total of 50 feet wide; 25 feet wide for each part).

Also, the applicant is proposing a fuel modification program to protect the proposed residential development from fire hazards (Exhibits 3 and 4). Approximately 1.22 acres of the 3.12 acres of coastal sage scrub on the site would be subject to the fuel modification plan. This fuel modification program, which has been approved by the Orange County Fire Authority, proposes four fuel modification zones (Zones A through D) which progressively increase vegetation thinning as the zones approach the development area.

“Zone A” is a 20 foot wide area where no combustible structures are allowed. Zone A is essentially the landscaped sideyard of the residential lots adjacent to the open space area. Landscaping within this zone would consist of ornamental vegetation normally associated with residential development. Year round maintenance such as irrigation, vegetation thinning and removal, weed control, and fertilizing is proposed. No existing coastal sage scrub exists within this proposed zone.

There are two “Zone B” areas (herein Zone B – Area 1 and Zone B – Area 2). Zone B – Area 1 is 10 to 50 feet wide and occurs between the proposed residential development and CSS Stands 1 and 2. Within this zone, 100% of the existing vegetation, except for any California sagebrush (*Artemisia californica*), would be removed and replaced with drought tolerant and fire retardant plant species. Year round maintenance would include irrigation, weed control, plant removal and replacement, and fertilization. CSS Stands 1 and 2 would not be directly impacted by activity within Zone B – Area 1. Zone B – Area 2 is an approximately 10 to 50 foot wide area located between CSS Stands 1 and 2 with the same plant removal, installation, and maintenance plan as Zone B – Area 1.

Zone C is a fifty foot wide irrigated and plant thinning zone. 100% of specified non-native grasses and forbs would be removed. Native plants would be planted within this zone and a temporary irrigation system would be installed for purposes of establishing plants. Any native vegetation which becomes re-established would be thinned to meet the OCFA 50% maximum coverage requirement. In addition, dead and dying vegetation and debris and trimmings would be removed or mulched. Maintenance such as vegetation removal and thinning, would occur seasonally, but not during the California gnatcatcher breeding season. No direct impacts to CSS Stands 1 and 2 would occur in this zone.

Zone D is a fifty foot wide irrigated and plant thinning zone with a similar plant removal, planting, and temporary irrigation scheme as Zone C. However, maintenance in this area would only occur “periodically”, but also not during the California gnatcatcher breeding season. In addition, maximum vegetation coverage would increase from 50% to 70% in this zone. No direct impacts to CSS Stands 1 and 2 would occur in this zone.

No direct impacts to CSS Stands 1 and 2 would occur as a result of the proposed fuel modification program. However, within Zone B – Area 2, the program would introduce a high degree of disturbance to areas occupied by California gnatcatcher. Furthermore, activities within Zone C and D would increase disturbance to California gnatcatcher occupied area. However, the proposed removal of non-native plants and replacement with native plant species would improve the overall quality of the habitat within the open space area. In addition, the proposed planting of 0.31 acres of *Artemisia californica* as required by the USFWS, would improve the overall quality of the habitat. However, it remains that the proposed fuel modification within Zone B – Area 2 would directly disturb habitat occupied by California gnatcatcher. In addition, plant species would be introduced in this zone which would not be conducive to use by California gnatcatcher. Such activity would not be compatible with the continuance of the habitat areas and would therefore be inconsistent with Policies 3.1 and 3.7 of the Conservation/Open Space Element of the certified LCP. Therefore, the

Commission imposes Special Condition 15 which requires that, in order to mitigate for disturbances caused by fuel modification in the habitat area, fuel modification within Zone B – Area 2 shall be avoided. In addition, Zone B – Area 2 shall be planted with *Artemesia californica* in the same manner as the 0.31 acres of *Artemesia californica* required by the USFWS. This area shall be managed in the same manner as CSS Stands 1 and 2 (i.e. no fuel modification activities). Furthermore, in order to provide a buffer between the proposed residential development and CSS Stands 1 and 2, Zone B – Area 1 shall be expanded to be a minimum 50 feet wide. However, the public trail may be within the 50 foot wide Zone B – Area 1 but no closer than 25 feet to the outer edge of CSS Stands 1 and 2. No portion of Zone A shall encroach into the revised Zone B – Area 1. This change may require the elimination or relocation of at least 2 residential structures. If, in response to the above, the OCFA requires changes, beyond those outlined above, to the fuel modification plan for fire safety, the applicant shall first consider moving the development away from the open space area such that it would be safe from fire hazards rather than implement any additional thinning or removal of vegetation within the open space area. Alternative methods of improving fire safety would be considered provided such alternatives do not result in impacts upon sensitive habitat areas. Any such changes shall require an amendment to this permit unless the Executive Director determines that no amendment is required. In addition, Special Condition 15 requires that the elements of Special Conditions 14 and 16 be incorporated into the fuel modification program which shall become known as the fuel modification and habitat management program.

Therefore, as conditioned, the Commission finds the development consistent with the resource protection policies of the certified LCP.

C. PUBLIC ACCESS/RECREATION

Policy 1.8 of the Land Use Element of the certified LCP states:

The location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service, providing non-automobile circulation within the development, providing adequate parking facilities or providing substitute means of serving coastal development with public transportation, and assuring the potential for public transit for high intensity uses.(Coastal Act/30252)

Policy 3.3 of the Land Use Element of the certified LCP states:

Priority should be given to those projects that provide for coastal recreational opportunities for the public. Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible provided. Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible (Coastal Act/30213, 30222, 30223)

Policy 3.5 of the Land Use Element of the certified LCP states:

Public facilities including parking areas or facilities shall, wherever appropriate and feasible, be distributed throughout the coastal zone area to mitigate against the impacts, social and otherwise, of overcrowding and overuse by the public of any single area. (Coastal Act/30212.5)

Policy 4.3 of the Land Use Element of the certified LCP states:

Public access, which shall be conspicuously posted, and public recreational opportunities, shall be provided to the maximum extent feasible for all the people to the coastal zone area and shoreline consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse. (Coastal Act/30210)

Policy 8.6 of the Land Use Element of the certified LCP states:

Maximize the provision of public trail and transit loop systems within the Monarch Beach area. The systems shall include access to and along the shoreline and to the visitor-serving and public places within Monarch Beach. (Coastal Act/30210)

Policy 8.12 of the Land Use Element of the certified LCP states:

Within the Monarch Beach Resort Specific Plan, establish a development phasing plan to achieve first, the primary objective of the development of the public open space, public parks, public trails, and public roads; secondly, the visitor serving resort complex; and lastly, the residential dwellings. Concurrent development may be permitted only if the primary objective is being satisfied. (Coastal Act/30213, 30222)

Policy 8.13 of the Land Use Element of the certified LCP states:

The existing public trails and public recreational facilities within the Monarch Beach Resort Specific Plan area shall be preserved and maintained. Signs shall be posted at conspicuous locations within the Specific Plan area, and a manned information center established in the Monarch Beach Resort Hotel, to inform the general public of the public access and public recreation opportunities available within the Specific Plan area. (Coastal Act/30210-30213, 30220-222, 30223)

1. Coastal Access Fund

Policy 1.8 of the Land Use Element of the certified LCP requires that new development maintain and enhance public access to the coast by providing the potential for public transit for high intensity uses. In approving Coastal Development Permit 5-92-188 in August 1992, the Commission imposed Special Condition 1 which requires the applicant to pay fees into a coastal access fund. These funds are to be utilized for the provision of coastal recreational transit services and other coastal access purposes in Orange County. The purposes of this condition was to assure compliance with coastal access policies regarding public access and to assure that the development was in compliance with the underlying requirements of P-79-5539 (i.e. the "Master Permit").

In their approval of up to 3,000 residential units in the "Master Permit" (which includes the subject project site), the Commission previously found that the amount of traffic associated with residential development would adversely impact public access to the coast. Public coastal access would be adversely impacted because the new residents would be using Pacific Coast Highway for commuter purposes thereby competing with beachgoers for road capacity. Additionally, the new residents, especially those living seaward of Pacific Coast Highway, would be able to utilize the public Salt Creek Beach to a much greater extent than the members of the general public who do not reside adjacent to the beach. Due to this adverse cumulative impact caused by the substantial number of

housing units to be constructed in the area the Commission required that each new market rate residential unit contribute to a fund established to provide and enhance recreational transit services in the project vicinity, and the greater Orange County coastal zone area. Furthermore, Coastal Act Section 30222 gives a lower priority to residential use of coastal land. Due to these impacts, the "Master Permit" imposed a "Coastal Access Program" special condition on the residential units which requires the developer to pay a fee of \$275.00 ((in 1979 dollars) or greater if "fair share" was determined to be greater) per each market rate residential unit into an Orange County coastal access fund. The fund would be administered by a separate legal entity with the Coastal Commission specifying the use of the funds to provide or improve coastal recreational transit services in the project vicinity (See Exhibit 3 - Coastal Access Program special condition). The per unit fee is to be adjusted annually according to the Consumer Price Index. The current fee is now \$674.41 based on the latest CPI (set in March 2000).

Originally the trigger for the fee payment was at the time of a sewer hookup for the new residential unit. Subsequently, the Commission revised the special condition which requires the fee to be paid prior to the issuance of the coastal development permit. The Commission further revised the special condition by allowing the funds to be used for coastal recreation transit services or other coastal access purposes in the coastal zone of orange County.

Pursuant to the "Master Permit" all non-affordable residential units within the Master permit area have been required to pay the access fund fee. According to the figures available as of the date of this staff report there is currently approximately \$980,000 in the access fund. The staffs of the Coastal Commission, County of Orange, City of Dana Point, and City of Laguna Niguel have reinitiated efforts to identify appropriate use of the fees collected thus far.

As noted above, the Commission previously imposed Special Condition 1 in order to assure consistency with the public access and new development provisions of the Coastal Act as well as consistency with Commission action on the "Master Permit" for the area. Under this amendment, the Commission imposes Special Condition 8 which clarifies that the previously imposed special condition remains in effect and are carried forward to apply to the development as now proposed.

2. Parking

The access policies of the Coastal Act and the certified Dana Point local coastal program (LCP) require the protection of public access to the beach. When a private development does not provide adequate on-site parking, patrons of that development must use off-site public parking spaces which would otherwise be available to the public including visitors to the coastal zone. This results in significant adverse impacts upon coastal access. Therefore, an adequate quantity of on-site parking spaces sufficient to meet the demands of the development ensures that public parking spaces and public access are not adversely affected by the proposed development.

When Coastal Development Permit 5-92-188 was approved in August 1992, the plan included the construction of a golf Clubhouse on the project site. In order to assure that adequate parking was provided to accommodate the parking demand that the clubhouse would generate, and to assure the clubhouse and parking would be available to the general public, the Commission imposed Special Condition 4 which required a deed restriction outlining these requirements. In 1996, the Commission approved an amendment to Coastal Development Permit 5-92-188 which eliminated the golf clubhouse from the project site. In addition, the Commission approved Coastal Development Permit 5-96-006 which moved the golf clubhouse across the golf course to a location adjacent to the hotel site. Coastal Development Permit 5-96-006 incorporated similar conditions to those previously

imposed under Coastal Development Permit 5-92-188. However, in the amendment to Coastal Development Permit 5-92-188 in 1996, it was not clear that Special Condition 4 was eliminated as it pertained to the modified development. Since the golf clubhouse is no longer part of the scope of development authorized under Coastal Development Permit 5-92-188 and since the requirements of Special Condition 4 were transferred to Coastal Development Permit 5-96-006 (which has been issued and vested), the Commission eliminates Special Condition 4 from Coastal Development Permit 5-92-188.

With the elimination of the golf clubhouse from the site in 1996, the development is now entirely residential. The Monarch Beach Resort Specific Plan, which is a portion of the certified local coastal program, contains requirements that residential development provide a minimum of 2 parking spaces per residential unit, plus 0.5 guest parking spaces per residential unit. The proposed project provides a minimum of 3 parking spaces per residential unit. In addition, there will be on-street parking available for residents and guests of the community. Therefore, the development is consistent with the parking requirements of the local coastal program.

Therefore, as conditioned, the Commission finds the proposed development consistent with the access policies of the certified Dana Point Local Coastal Program.

3. Signage

In 1979 the Commission established a requirement for a signage program which would announce the various public amenities available to the public when it approved the "Master Permit". The Commission reiterated the need for the signage program as a special condition of permit 5-86-503 (Stein-Brief) for their commercial/recreation project at this site. Finally, the Commission required signage plans as a special condition for the Hemmeter project. The special condition applied to all five projects as a whole. The proposed project includes a public trail that is an integral part of the public amenities plan for the Monarch Beach Resort Specific Plan Area. A signage program is necessary, to promote public awareness that this site has a public trail available for public use and beach access. The Commission previously imposed Special Condition 6 which required the implementation of the signage program. Therefore, the Commission imposes Special Condition 8 which clarifies that the previously imposed special condition remains in effect and are carried forward to apply to the development as now proposed.

4. Phased Development

The certified LCP places developmental priority on recreational and visitor serving facilities. The applicant is proposing to construct residential development which is a low priority development. The Monarch Beach Resort Specific Plan requires that construction of the park, golf course, and golf clubhouse must occur prior to or concurrently with the opening of the hotel and/or any residential units within the Specific Plan area. The golf clubhouse has been constructed (5-96-006) and the hotel is currently under construction (5-92-168). Further, the residential units will increase the population of the area.

To meet Coastal Act goals of promoting beach access the Commission previously found that that the recreational, visitor serving, and public amenities components must be constructed prior to the construction of the residential development. Further, to ensure that the future development of this site after this permit is approved remains consistent with the Coastal Act, the Commission found it necessary to require that any future improvements to the site and changes in operation of the site be

subject to Commission review. Therefore, the Commission imposed Special Conditions 3 and 7. The Commission now imposes Special Condition 8 which clarifies that the previously imposed special conditions remains in effect and are carried forward to apply to the development as now proposed.

5. Public Trails

The applicant is proposing the construction of a 4 foot wide public trail within an 8 foot wide easement which would connect the existing public Salt Creek trail to the existing Monarch Bay Plaza shopping center (herein known as 'Trail Segment A'). Another leg of the proposed trail would connect an existing residential community to the Monarch Bay Plaza shopping center (herein known as 'Trail Segment B') and to Trail Segment A. Trail Segment B is located along the northwestern portion of the project area within the northern 8.8 acre portion of the site (i.e. VTTM 14604). These proposed trail segments will facilitate non-automobile circulation within the Monarch Beach Specific Plan area and will promote public access to the beach by providing a link between the existing Monarch Bay Plaza shopping center and the Salt Creek Trail which ultimately provides access to the beach. The trail would be dedicated with an easement for public access and the trail and easement would be maintained by the applicant or successor in interest (i.e. homeowners association). In order to implement the applicants proposal, the Commission imposes Special Condition 17 which requires the applicant to provide evidence of dedication of the trail easement.

6. Other Access Issues

As noted above, the project approved in August 1992 included a golf clubhouse. In order to assure that the golf clubhouse would be available for public use and not be converted to a members-only facility, the Commission imposed Special Condition 5. When the Commission approved the amendment in 1996 eliminating the golf clubhouse from this site and transferring to another site, the Commission transferred the requirements to Special Condition 5 to Coastal Development Permit 5-96-006. However, it was not clear that the requirements of Special Condition 5 were deleted from Coastal Development Permit 5-92-188. Therefore, since the golf clubhouse is no longer a part of Coastal Development Permit 5-92-188, and the requirements have been transferred to another permit, the Commission deletes Special Condition 5.

7. Conclusion – Access

Policy 1.8 of the Land Use Element (LUE) of the certified LCP requires that development provide non-automobile circulation with the development. In addition, Policy 8.6 of the LUE requires the maximization of public trails within the Monarch Beach area. The applicant has proposed a public trail and easement. Special Condition 17 implements the applicants proposal. In addition, previously imposed Special Condition 1 requires funding for access related transportation. Therefore, as conditioned, the project is consistent with Policy 1.8 and 8.6 of the LUE. In addition, previously imposed Special Condition 1 addresses the requirements of Policy 3.5 of the LUE. The phasing requirements of previously imposed Special Condition 3 addresses the requirements of Policy 3.3 and 8.12 of the LUE. In addition, previously imposed Special Condition 6 requires signage which conforms the project with Policy 4.3 and 8.13 of the LUE. Therefore, as conditioned, the Commission finds the development consistent with Policies 1.8, 3.3, 3.5, 4.3, 8.6, 8.12, and 8.13 of the LUE of the certified LCP.

D. PUBLIC VIEWS/VISUAL LINKAGES/LANDFORM CHANGES

Policy 4.3 of the Urban Design Element of the certified LCP states:

Develop stronger pedestrian, bicycle and visual linkages between public spaces and to and along the shoreline and bluffs. (Coastal Act/302 10, 302 12)

Policy 4.5 of the Urban Design Element of the certified LCP states:

Protect and enhance existing public views to the ocean through open space designations and innovative design techniques (Coastal Act/30251)

Policy 2.2 of the Conservation/Open Space Element of the certified LCP states:

Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact (Coastal Act/30250)

Policy 2.9 of the Conservation/Open Space Element of the certified LCP states:

Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with land forms. (Coastal Act/30240, 30250, 30251, 30253).

Policy 3.8 of the Conservation/Open Space Element of the certified LCP states:

Development in areas adjacent to parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas through, among other methods, creative site planning and minimizing visual impacts, and shall be compatible with the continuance of those parks and recreation areas. (Coastal Act 30240)

Policy 6.4 of the Conservation/Open Space Element of the certified LCP states:

Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in Figure COS-5, "Scenic Overlooks from Public Lands", of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. (Coastal Act/30251)

Section 2.3.1 of the Monarch Beach Resort Specific Plan portion of the certified LCP includes 'grading guidelines' which state, in relevant part:

The Specific Plan is located in an area with predominately terraced topography consisting of relatively large flat pads created by previous grading activity. Existing natural landforms should be preserved to the extent possible. Modifications to existing natural landforms should be designed to blend in with and be consistent with the existing setting.

Finished grading should soften the harshness of large graded pads through the use of contour grading and site-adaptive structures. Contour grading should be applied at all daylight cuts, tops and toes of manufactured slopes, intersections of manufactured slopes and the interface between manufactured slopes and topography. Contouring should accomplish a rounding of manufactured edges and vary in slope to result in the appearing complimenting natural conditions...

...Grading for the Clubhouse Village [Hillside Village] should respond to the environmental qualities of the site. The previously graded southern portion of the site should be regraded with contoured pads with a curvilinear road system reflective of the natural topography. The center area of the site should be graded as contoured slopes providing for construction of residential units directly upon the slopes. The northernmost end of the site should remain ungraded (except for any remedial alterations) and, to the extent possible, remain in a natural condition...

...Any grading within or adjacent to the Salt Creek floodplain should minimize alteration of that corridor and its habitat. Any landform alteration within the corridor area resulting from grading or construction will be repaired and returned to a condition approximating the existing corridor condition to the maximum extent possible...

Section 2.3.5 of the Monarch Beach Resort Specific Plan portion of the certified LCP includes a 'view design guidelines concept' which states, in relevant part:

The architectural and landscape guidelines reflect a sensitivity toward existing public off-site views and for maximizing on-site views. (See Exhibits 2.17, 2.18, 2.19 a & b and 2.20)...

...There are public views from existing roadways, which will not be impacted significantly by the development of the Specific Plan area. These include views from Niguel Road, PCH and Camino del Avion, that look across the existing golf course to the horizon line of the ocean. (See exhibits 2.19 A & B). Some of these views will be enhanced by development, as the golf course is being expanded and improved, and the existing graded pads will be replaced by development softened with landscaping.

It should be noted that Niguel Road, which is designated by the City as a "scenic road", does not currently offer ocean views along the entire stretch of road adjacent to the project site, due to existing mature vegetation and off-site development. Nevertheless, location, massing and elevation of buildings within the Specific Plan area are designed to maintain public views from Niguel Road at controlled points (See exhibit 19). In addition, the future development of off-site residential property, located between the Pacific Ocean and PCH and adjacent golf course, will impact the existing view corridors from Niguel Road as well as PCH and Camino del Avion.

The Specific Plan also provides public access to the resort grounds, community park, beach house, vista points in the park and other location on the site, which offer scenic views overlooking Salt Creek, the golf course, Salt Creek Beach and Pacific Ocean...

Although the existing visual character of the site will be altered, the Specific Plan is [sic] endeavors to retain public views, where possible, from Niguel Road, Camino del Avion and PCH, by considering building setbacks, grade changes, building heights, etc., and would enhance public access to scenic views at the edge of the site through the development of Sea Terrace Community Park and a variety of open space features.

The proposed project would be constructed on a parcel of land adjacent to Salt Creek and the public Salt Creek Trail. The Salt Creek Trail extends from the Salt Creek Corridor Regional Park, inland of Camino Del Avion, to Salt Creek Beach. Public views of the ocean are available down the Salt Creek Corridor. In addition, public views of the ocean are available from several vantages throughout the Monarch Beach Specific Plan area. Figure UD-2 of the Urban Design Element and Figure COS-4 of the Conservation/Open Space Element of the certified LCP identify two public “overlooks” located at Camino Del Avion and adjacent to ‘Site 14’ within the Monarch Beach area (Exhibit 8, page 1). In addition, Figure COS-5 of the Conservation/Open Space Element of the certified LCP identifies “scenic overlooks from public lands” located at Camino Del Avion, along trails within the golf course area and from vantages taken from lands accessible from Crown Valley Parkway (Exhibit 8, page 2). Also, the Monarch Beach Resort Specific Plan identifies vista points on Exhibit 2.6 which are located at Camino Del Avion and from the open space area next to “Site 14” (Exhibit 8, page 3). In addition, there is a “view corridor” from Niguel Road shown on Exhibit 2.7 as well as four “controlled viewpoints” (labeled A – D) from vantages from Niguel Road (A), the hotel grounds (B), Sea Terrace Community Park (C), and from Pacific Coast Highway at the corner of the subject site (D) (Exhibit 8, pages 4 and 5).

The subject site is visible from the various viewing areas described in the certified local coastal program. In addition, construction of the proposed project would have some impact upon public views taken from Camino Del Avion, the open space area next to Site 14 and from Niguel Road. However, as will be discussed below, these impacts are not significant and were anticipated in the certified local coastal program. In addition, the proposed project represents an overall improvement compared with the previously approved project on issues relating to the intensity of development, impacts on biological resources, public views, and landform change.

The proposed project will re-grade the subject site and result in the construction of residential structures. This grading and construction of structures would be concentrated on the southern portion of the project site. No grading (other than for public trails) and no residential structures would be built on the northern portion of the site. Grading would change the southern portion of the site from a site with two relatively large flat graded pads approximately at elevations 110 and 130 into three contoured pads at approximately elevations 100, 118, and 137 (Exhibit 2, page 2 and Exhibit 7). The existing and proposed highest portions of the site would be near the northwestern corner of the southern part of the site. Elevations would step down from this point descending toward Salt Creek and Pacific Coast Highway. The proposed residential structures would be 28 to 32 feet tall above finished grade (Exhibit 2).

The southern portion of the site, where the development will be concentrated, was once the terminus of a low hill ridgeline. According to the applicants geotechnical report titled Geotechnical Report for Grading Design Tentative Tract 14605, Hillside Village South, Dana Point, California by AGRA Earth & Environmental, Inc. of Anaheim, California dated March 20, 2000, the subject site was graded between 1970 and 1974, 1981, 1982, and 1988. This grading changed the landform of the southern portion of the site by cutting off the top of the ridge and placing the fill on the flanks of the ridge. The result is the present landform of the southern portion of the site, with its two large flat graded pads.

The policies of the certified local coastal program have guidelines related to the grading of the subject site stating that the “...*previously graded southern portion of the site should be regraded with contoured pads with a curvilinear road system reflective of the natural topography. The center area of the site should be graded as contoured slopes providing for construction of residential units directly upon the slopes. The northernmost end of the site should remain ungraded (except for any*

remedial alterations) and, to the extent possible, remain in a natural condition..." The proposed project is generally consistent with this concept in that the development incorporates contoured pads and slopes and a curvilinear road system that descends from higher to lower levels which is reflective of the natural topography. In addition, unlike the previously approved project, no residential development will occur on the northern portion of the site. Therefore, the northernmost end of the site would remain ungraded and in its natural condition.

It is not suggested that the proposed project is developing the site in a manner that recreates the pre-grading topography of the site. In addition, there certainly would be methods of grading the site which would be even more reflective of natural topography by increasing the number of grading contours and reducing the size of the building pads within the development area. However, this tendency toward a manufactured look is balanced by the fact that the southern portion of the site – where development is being concentrated- has been significantly graded in the past and the fact that significant grading and construction of residential development is now being avoided on the northern portion of the site. Therefore, the natural features of the site (the northern portion) are being retained. It is also notable that the current 48-unit proposal significantly decreases the intensity of use of the site compared with previous approvals for commercial development at the site (P-79-5539) as well as compared with the combined total of 166 residential units previously authorized under 5-92-186 and 5-92-188. In addition, it remains that the development on the southern portion of the site is designed to step down the hillside giving an overall appearance that is reflective of natural topography.

Furthermore, the development does respond to local coastal program policies which require that grading and construction of structures on the site occur in a manner which minimizes impacts upon public views. For instance, the proposed project eliminates significant development on the northern portion of the site. Based upon a view analysis prepared by the applicant (Exhibit 9), the elimination of this development improves public views of the ocean and open space areas from Camino del Avion and the Salt Creek Trail. In addition, the site is being graded in a manner which steps the development up the hillside. The stepping of the development maintains the "V" shape of the Salt Creek Corridor. In addition, the design of the project maintains a low profile along the edge of the site adjacent to the Salt Creek Trail where view impacts could be more significant if grades or structures were higher.

Also, the proposed project is consistent with the height limits established in the Monarch Beach Specific Plan portion of the certified LCP. The development standards establish 3 height zones for the property. Zone 3 (Zones 1 and 2 are elsewhere in the Specific Plan area) establishes a maximum height of 28 feet on the southern half of the southern portion of the site. Zone 4 establishes a maximum height of 41 feet for the northern part of the southern half of the site. Finally, Zone 5, which pertains to the Hillside Village North portion of the site, establishes a maximum height of 28 to 38 feet. The proposed development would occur within Zones 3 and 4. No residential development is proposed in Zone 5. The heights are measured from the adjacent exterior finished grade to the mid-point of the roof. In addition, the Monarch Beach Specific Plan authorizes an additional 8 feet for architectural projections such as towers, chimneys, mechanical penthouses and "other such architectural elements consistent with the Specific Plan design guidelines and development standards". The proposed structures, which are a maximum of 32 feet tall, including architectural projections, are consistent with these standards.

Opponents of the proposed project have suggested that the proposed project would significantly degrade public views. According to the opponents, views from Camino del Avion, Niguel Road, and

the open space area near Site 14 would be impacted by the development. In support of their position, the opponents have submitted a view impact analysis from Niguel Road and the open space area near Site 14 (Exhibit 10). This view analysis does indicate that some public blue water views would be impacted from the vantages analyzed. For instance, from Niguel Road, public blue water views would be impacted because the grading plan would elevate the central portion of the site by approximately 10 feet over current grade (Exhibit 7). The elevation of this central portion of the site is occurring so that ocean views may be obtained from the houses to be built on this portion of the site. In addition, the construction of the houses along the northeastern and southeastern borders of the site, adjacent to the Salt Creek Trail, would impact public views of the water available from the open space area near Site 14.

The public views in question occur from vantage points that are inland of Pacific Coast Highway. In some instances, such as at Camino del Avion, the vantage point is approximately 1 mile inland of the ocean. There is existing development between all of the identified public view points and the water. This existing development includes a golf course, housing, hotels, parks, trails, and roads. The protection of significant public views to and along the shoreline is a goal of the certified local coastal program. However, the certified local coastal program anticipates that development will impact public views from the various vantage points. The subject site had been planned for intense development since the "master permit" stage (when a commercial center was anticipated) through the presently certified local coastal program, which authorizes up to 7-14 units per acre on the site. The proposed project significantly improves views compared with previously approved projects. Also, any impacts upon public views from this development would be mitigated through the provision of a variety of public viewing opportunities which exist from the various public trails, future public park, and the publicly accessible grounds of the hotel.

Furthermore, while the development would impact some public views, based upon the materials submitted, these view impacts are not significant. For instance, the project would impact public views from the open space area near Site 14. In order to avoid this view impact, the houses along the northeastern and southeastern borders of the site within the view corridor would have to be eliminated. However, without modifications to the project blue water views would remain from this vantage. In addition, the project would have some impact upon public views from Niguel Road. However, significant blue water views would remain. Finally, the opponents assert that public views from Camino del Avion would be significantly impacted by the development. The applicant has submitted a view analysis which appears to be taken from the vantage identified in the certified LCP which shows the proposed project would have a nominal impact on public views and would significantly improve the public view compared with the project approved at the site in August 1992. However, the opponents have asserted that if the view analysis were taken from Camino del Avion on the eastern side of the Salt Creek, rather than the western side of the Salt Creek, the impact would be more significant. The opponents have not submitted their own view analysis showing this impact. However, photographs from this vantage indicate that the development would be visible. However, the impact does not appear to be significant because this vantage is approximately $\frac{3}{4}$ mile from the development area and approximately 1 mile from the water such that the vista would not be significantly encroached upon.

In order to assure the development is constructed consistent with the plan submitted the Commission imposes Special Condition 22. In addition, in order to assure that future development does not further encroach upon public views resulting in significant impacts, the Commission must be able to review any future changes to the development, such as changes in grades or the height of any structure. The Commission previously imposed Special Condition 7 requiring a deed restriction

which requires that future improvements shall require a new permit or permit amendment. Special Condition 8 assures that this condition is carried forward and applies to the development as now proposed.

Therefore, as conditioned, the Commission finds the development is consistent with the visual resource protection policies of the certified LCP including Policy 4.3, and 4.5 of the Urban Design Element, Policy 2.2, 2.9, 3.8, and 6.4 of the Conservation/Open Space Element and the Monarch Beach Resort Specific Plan.

E. HAZARDS

Policy 2.8 of the Conservation/Open Space element of the certified LCP states:

Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Recreation/Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of the net acreage available for determining development intensity or density potential. (Coastal Act/30233, 30253)

Policy 2.17 of the Conservation/Open Space Element of the certified LCP states:

Establish building code, setback, site design and landscaping requirements that assure adequate fire protection to minimize risks to life and property. (Coastal Act/30253)

1. Geologic Stability

The subject site is adjacent to Salt Creek and south of an existing development known as the Bluffs Apartments which is also adjacent to Salt Creek. A significant landslide damaged buildings within the Bluffs Apartments complex, therefore, the development is adjacent to a known geologic hazard area. The subject site which consists of the southern portion (VTTM 14605) and the northern portion (VTTM 14604), is underlain by San Onofre Breccia, Monterey Formation, landslide debris, coluvium or slope wash, and artificial fill. The southern portion of the site, where the residential development will be concentrated, has been heavily graded in the past. This portion of the site was once the terminus of a ridgeline which has been flattened through grading. Essentially, the top of the ridge was cut off and placed as fill on the flanks of the ridge.

The northern portion of the site, where the proposed open space dedication will occur, is the flank of a hillside, where a limited amount of grading has occurred. According to the geologic study, much of this site is involved with landsliding. These landslides presently have factors of safety between 1.1 to 1.3. The geologic report indicates that stabilization to a factor of safety of 1.5 would require "significant and difficult remedial grading". Therefore, development on this site is being avoided. These landslides only encroach slightly upon the southern portion of the site, where development will be concentrated. The geologic report establishes a "Structure Setback Line" upon which no structures should encroach. The proposed development conforms with the setback line.

In order to mitigate the geotechnical issues on the site, the geotechnical report recommends the following: the removal and recompaction of artificial fills within the development area in order to assure proper soil compaction; removal and off-site disposal of oversize cobbles and boulders; soil

treatment and strengthened foundations in areas of higher expansive soils; installation of moisture barriers; and removal and replacement of any existing landslide material within the zone of influence of adjacent building pads. The geotechnical report also provides recommendations regarding site preparation and grading, dewatering, slope construction, foundation designs, drainage control, among others. These measures are necessary to assure the safety of the proposed development, therefore, the Commission imposes Special Condition 18, which requires the applicant to submit final plans which conform with the recommendations of the geotechnical report.

In addition, a geologic letter report titled Geotechnical Review of Proposed Improvements to Tract 14604 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000 states that the proposed gravel footpath is located outside the area of mapped landslide and that construction and maintenance of the path is not expected to adversely impact any landslide areas. Meanwhile, the proposed fuel modification program does encroach into landslide areas and inappropriate irrigation could cause impacts. Therefore, irrigation should be monitored and controlled to prevent landslide activation. In order to assure these recommendations are incorporated, Special Condition 18 requires the applicant to comply with the recommendations.

In addition, a geologic letter report titled Geotechnical Review of Proposed Wetlands Area, Lot 8 Tract 14605 by AMEC Earth & Environmental of Anaheim, California dated September 21, 2000 provides recommendations regarding the wetlands area to avoid adverse geologic and flooding hazards. In order to assure these recommendations are incorporated, Special Condition 18 requires the applicant to comply with the recommendations.

Although adherence to the geotechnical consultant's recommendations will minimize the risk of damage from erosion, landsliding, and earth movement, the risk is not eliminated entirely. The development is located adjacent to an area where known landslides exist, therefore the Commission finds that, as a condition of approval (Special Condition 19), the applicant must record an assumption-of-risk deed restriction to inform the applicant and all current and future owners of the subject site that the site is subject to hazards from landslides, erosion, and earth movement.

The applicant's geotechnical consultants assert that the proposed development is designed in a geotechnically safe manner. However, geotechnical evaluations do not guarantee that erosion or further landslides will not affect the stability of the proposed development. There is always some risk of an unforeseen natural disaster, such as an unexpected landslide due to an unknown failure plane, among other hazards, that would result in complete or partial destruction of the site or the development.

In case such an unexpected event occurs on the subject property, the Commission attaches Special Condition 19, which requires recordation of a deed restriction whereby the landowner assumes the risks of extraordinary erosion and geologic hazards of the property and accepts sole responsibility for the removal of any structural or landslide debris resulting from landslides, slope failures, erosion, on the site from any public accessway or any adjacent properties including the Salt Creek Trail or Salt Creek itself.

The Commission further finds that Special Condition 19 must be attached because recordation of the deed restriction will provide notice of potential hazards of the property and help eliminate false expectations on the part of potential buyers of the property, lending institutions, and insurance agencies that the property is safe for an indefinite period of time and for further development indefinitely in the future.

In addition, even though there is a potential for future geologic hazard, no one can predict when or if there might be a failure that would affect the proposed development since such failures appears to be episodic in nature. Special Condition No. 19 also requires that the landowner assume the risks of extraordinary erosion and geologic hazards of the property and waives any claim of liability on the part of the Commission or its officers, agents, and employees for any damage due to these natural hazards; in addition, the landowner accepts sole responsibility for the removal of any structural or other debris resulting from landslides, slope failures, or erosion on the site.

In addition, the proposed project includes the export of several thousand cubic yards of soil from the site. The applicant has stated that the disposal location is unknown at this time. In order to assure that any disposal within the coastal zone occurs with a coastal development permit, the Commission imposes Special Condition 20, which requires that prior to issuance of a coastal development permit, the applicant shall identify in writing, for the review and approval of the Executive Director, the location of the disposal site of the excess soil, demolition and construction debris resulting from the proposed project. Disposal shall occur at the approved disposal site. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place.

As conditioned, the Commission finds the development consistent with Policy 2.8 of the Conservation/Open Space element of the certified LCP.

2. Fire Hazards

As noted previously in these findings regarding biological resources, the proposed project includes a fuel modification program to mitigate any fire hazards which may affect the proposed development. The Commission has required changes to the fuel modification program in order to find the development consistent with the biological resource protection policies of the certified LCP. In order to assure that any modifications to the project are consistent with California Fire Code requirements for fuel modification, and to assure that any changes are reviewed for consistency with this approval, the Commission imposes Special Condition 15.

Therefore, as conditioned, the Commission finds the development consistent with Policy 2.17 of the Conservation/Open Space Element of the certified LCP.

F. WATER QUALITY

Policy 1.4 of the Conservation/Open Space element of the certified LCP states:

Protect water quality by seeking strict quality standards and enforcement with regard to water imported into the County, and the preservation of the quality of water in the groundwater basin, streams, estuaries, and the ocean. (Coastal Act/30231)

Policy 1.8 of the Conservation/Open Space element of the certified LCP states:

Coordinate with the appropriate Regional Water Quality Control Board, the County of Orange, and other agencies and organizations in the implementation of the National Pollution Discharge Elimination System Permits (NPDES) regulations to minimize adverse impacts on the quality of coastal waters. (Coastal Act/30231)

Policy 2.3 the Conservation/Open Space element of the certified LCP states:

Control erosion during and following construction through proper grading techniques, vegetation replanting, and the installation of proper drainage, and erosion control improvements. (Coastal Act/32043)

The proposed project would result in the subdivision and grading of the 14.3 acres of the 23.1 acres site. The implementation of the project would result in two phases where potential impacts upon water quality would occur: 1) the construction phase; and 2) the post-construction phase including the commitment of a 14.3 acre area for residential purposes. Construction phase impacts include erosion and sedimentation of coastal waters during grading. Post-construction phase impacts relate to the use of the proposed project, a residential development. Run-off from residential developments is commonly polluted with petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and cleaners; soap and dirt from washing vehicles and hardscape areas; dirt and vegetation from yard and common area maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Water quality in Orange County and the City of Dana Point has been subject to degradation in recent years. For instance, the County of Orange Ocean & Bay Closures, Posting and Advisory Status Report, which is regularly updated County web site (<http://www.oc.ca.gov/hca/regulatory/ocean/beach.htm>), indicates that there is a "Long Term Posting" for Dana Point Harbor and Doheny State Beach as a result of urban runoff impacts where bacterial levels consistently exceed health standards. These regular postings point to the need to ensure that new development is constructed in a manner which controls polluted run-off and treats the run-off so that coastal waters are not adversely impacted.

During the construction phase of the project water quality impacts could occur including erosion and sedimentation of Salt Creek as a result of exposed soils on the site. In addition, improper storage of construction materials and disposal of debris could cause impacts upon water quality. In order to assure that such impacts do not occur, the Commission imposes Special Condition 23 which outlines construction phase water quality protection requirements such as: no construction materials, debris, or waste shall be placed or stored where it may enter a storm drain or be subject to wave erosion and dispersion; any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of construction; Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of construction-related materials, and to contain sediment or contaminants associated with construction activity, shall be implemented prior to the on-set of such activity. BMPs and GHPs which shall be implemented include, but are not limited to: stormdrain inlets must be protected with sandbags or berms, all stockpiles must be covered, and a pre-construction meeting should be held for all personnel to review

procedural and BMP/GHP guidelines. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. In addition, Special Condition 23 requires that construction debris and sediment shall be properly contained and secured on site with BMPs, to prevent the unintended transport of sediment and other debris into coastal waters by wind, rain or tracking. Construction debris and sediment shall be removed from construction areas as necessary to prevent the accumulation of sediment and other debris which may be discharged into coastal waters. Debris shall be disposed at a debris disposal site outside the coastal zone, pursuant to Special Condition No. 20.

In order to identify for the Commission the non-structural, routine structural and special structural BMPs the applicant is proposing to use to address post-construction water quality impacts from the proposed development, the applicant has submitted Water Quality Management Plan, (WQMP) prepared by Hunsaker & Associates Irvine, Inc. of Irvine, California, dated October 5, 2000. The applicant's proposed water quality plan is designed with the "treatment train" approach and includes source and treatment control Best Management Practices (BMPs). Non-structural BMPs include homeowner/tenant education, activity restrictions, minimal use of fertilizers and pesticides in common areas, common area litter control, employee training, and BMP maintenance including catch basin inspection. Routine structural BMPs include directing runoff to landscaped areas, use of efficient irrigation systems in common areas, catch basin stenciling, and catch basin inlet trash racks. Non-routine structural BMPs include pre-construction maintenance of an existing catch basin, use of catch basins during construction and other erosion and debris control measures. Post construction non-routine structural BMPs include an in-line stormceptor to remove oil and sediment from storm water.

Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The applicable National Pollutant Discharge Elimination System permit ("NPDES") defines "MEP" as follows:

"MEP" means to the maximum extent practicable, taking into account equitable considerations of synergistic, additive, and competing factors, including but not limited to, gravity of the problem, fiscal feasibility, public health risks, societal concern, and social benefits."

The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost⁸.

The Commission finds that sizing the proposed post-construction structural BMPs to mitigate (treat, infiltrate, or filter) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. In a letter dated February 5, 2001 from Hunsaker & Associates the applicant has indicated that the proposed water quality management plan will be able to capture all project runoff in excess of natural flows and release them at a natural rate. Since the final calculations for the proposed water quality management system have not yet been performed, and to assure that the

⁸[ASCE/WEF, 1998. Urban Runoff Quality Management. WEF Manual of Practice No. 23, ASCE Manual and Report on Engineering Practice No. 87.]

proposed measures are consistent with the certified LCP, the Commission wishes to clarify for the applicant the requirements. Therefore, the Commission imposes Special Condition 21.

Special Condition 21 requires the applicant to submit a final WQMP for review and approval by the Executive Director of the Coastal Commission which is in substantial conformance with the Water Quality Management Plan (WQMP), Tract 14605, prepared by Hunsaker & Associates Irvine, Inc. of Irvine, California, dated October 5, 2000, submitted by the applicant, and which includes the following specifications. Special Condition 21 requires the proposed post-construction treatment BMPs to be sized based on design criteria specified in the condition, and finds this will ensure the proposed overall WQMP will serve to reduce pollutants in stormwater to the maximum extent practicable. Since the proposed water quality management system is necessary to mitigate the water quality impacts associated with use of the development, Special Condition 21 requires that the structural elements of the WQMP, approved by the Executive Director, be implemented prior to or concurrent with construction of infrastructure for the residential subdivision (i.e. streets, utilities, etc.). Special Condition 21 also specifies that all structural and non-structural BMPs shall be maintained in a functional capacity throughout the life of the approved development. Special Condition 21 specifies that any changes to the structures outlined in the WQMP necessary to accommodate the requirements outlined in Special Condition 21, shall require an amendment to this coastal development permit. Finally, in order to assure that the applicant and all successors-in-interest are aware of the requirements of Special Condition 21, the condition requires, prior to issuance of the coastal development permit, the applicant shall execute and record a deed restriction reflecting the requirements outlined in Special Condition 21.

In addition, the development proposes to discharge storm water into Salt Creek. In order to assure that Salt Creek is not adversely impacted by erosion or sedimentation from the discharge the Commission requires that post-development peak rate and volume are maintained shall not exceed pre-development levels for the 2-year, 24-hour storm runoff event. Therefore, the Commission imposes Special Condition 21.

As conditioned, the Commission finds that the proposed project is consistent with Policy 1.4, 1.8 and 2.3 of the Conservation/Open Space element of the certified LCP.

G. AFFORDABLE HOUSING PROVISIONS

As noted above, the project site was included in the approval of "Master Permit" (P-79-5539). The mixed use development included up to 3,000 residential units. In 1979, Coastal Act Section 30213 required "housing opportunities for persons and families of low or moderate income ... shall be ... where feasible, provided". That language was deleted by SB 626, the Mello Bill in 1982. The Mello Bill did, however, provide specific provisions for projects previously approved with affordable housing requirements.

Section 30607.2(d) provides that the Commission is not required to amend or modify any terms of a housing agreement where a housing condition has been met through a recorded agreement. Furthermore, the certified local coastal program includes provisions requiring the applicant to obtain any amendments to previously imposed coastal development permits directly from the Coastal Commission. In order to assure that the terms and conditions of P-79-5539 were carried out, the Commission previously imposed Special Condition 2 which requires the applicant to show evidence of compliance with these terms prior to issuance of the coastal development permit. The findings to support this condition are incorporated here by reference. Special Condition 8 ensures that the

applicant understands the previous condition is carried forward and applies to the development proposed under this amendment.

Therefore, as conditioned (to abide) by the conditions of the "Master Permit" for the subject site is the proposed project consistent with section 30607.2 of the Coastal Act and the certified LCP.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed project is located in an urban area. All infrastructure necessary to serve the site exist in the area. As conditioned, the proposed project has been found consistent with the Dana Point Certified Local Coastal Program. Newly and previously imposed special conditions will minimize any impacts to less than significant levels.

As conditioned, no feasible alternatives or feasible mitigation measures are known, beyond those required, which would substantially lessen any identified significant effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with CEQA and the policies of the City of Dana Point local coastal program.